

# **EXHIBIT I**

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,	)	
	)	Maricopa County
Respondent,	)	Superior Court
	)	No. CR 163419
v.	)	
	)	
SAMUEL VILLEGAS LOPEZ,	)	
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW

(Rule 32.9(c), Arizona Rules of Criminal Procedure)

ROBERT W. DOYLE  
Attorney at Law  
1010 E. Jefferson  
Phoenix, AZ 85034-2222  
(602) 253-1010  
State Bar No. 007380

## INDEX

- I. SYNOPSIS OF TRIAL COURT'S RULINGS
- II. ISSUES PRESENTED FOR REVIEW
- III. FACTS MATERIAL TO CONSIDERATION
- IV. REASON WHY PETITION SHOULD BE GRANTED
  - A. Ineffective Assistance of Counsel Before Trial
  - B. Ineffective Assistance of Counsel At Trial
  - C. Ineffective Assistance of Counsel at Sentencing
    - 1. Failure to Object to Presentence Reports
    - 2. Failure to Properly Prepare Expert Witness
  - D. Victim Impact Letters
- V. FOOTNOTES

## I SYNOPSIS OF TRIAL COURT'S RULINGS

In denying the petition for post-conviction relief, the trial court summarily dismissed all claims of ineffective assistance of counsel. The court found that petitioner failed to establish that counsel's performance fell below prevailing professional norms and failed to show a reasonable probability of a different result. The court also found the claim relating to victim impact evidence was waived by failure to raise it on direct appeal. The trial court also ruled that petitioner failed to factually prove that a stricken juror served on the jury panel. The court finally found that the motion for rehearing did not change the court's earlier findings. The trial court's rulings are attached to this Petition.

## II ISSUES PRESENTED FOR REVIEW

Did petitioner receive ineffective assistance of trial counsel who failed to move to change the trial judge, who had previously sentenced one of Petitioner's brothers to death and another to life in prison?

Did the trial judge err in denying a hearing where the record shows that a stricken juror served on the deliberating jury?

Did Petitioner receive ineffective assistance of trial counsel who failed to object to flawed presentence reports?

Did Petitioner receive ineffective assistance of counsel at sentencing who failed to give key documents to his medical expert for consideration?

Did the trial court err in considering the issue of improper victim impact letters as waived or precluded?

### III FACTS MATERIAL TO CONSIDERATION

On November 14, 1986 Petitioner Samuel Villegas Lopez was indicted on charges of first degree murder, kidnapping, sexual assault and burglary. Petitioner's jury trial began on April 16, 1987. At trial, the State called 19 witnesses, including 5 experts. After the close of the State's case, the defense moved for a judgment of acquittal. After the denial of the judgment of acquittal and the offer of proof as to one potential defense, the defense rested. The defense called no witnesses and the Petitioner chose not to testify in his own defense. No experts testified on behalf of the defendant. The jury found the Petitioner guilty on four of the five charges, including first degree murder. The jury acquitted the Petitioner on one count of sexual assault.

On June 19th and 25th, 1987 the trial court heard aggravation and mitigation evidence. The State put on evidence to prove the Defendant's prior convictions and that the murder was committed in an especially cruel, heinous or depraved manner. The defense submitted a memorandum citing the Petitioner's intoxication as a mitigating circumstance. Prior to sentencing, the trial court considered a pre-sentencing memorandum filed by the Maricopa County Adult Probation Office. As part of the special verdict, the trial court found that Petitioner had previously been convicted of a crime involving violence and that the crime was committed in an especially cruel, heinous, or depraved manner. The court found that no mitigating circumstances existed. The trial court sentenced Petitioner to death on the first degree murder charge and to consecutive terms of imprisonment on all of the other counts.

Petitioner filed a direct appeal to the Arizona Supreme Court. On January 16, 1990, the Arizona Supreme Court rendered its opinion in this matter. The Arizona Supreme Court found no error at trial and affirmed the judgment and convictions. However, the Court found that Petitioner had not previously been convicted of a crime involving violence and that this statutory aggravating factor did not exist. State v.

Samuel Villegas Lopez, 163 Ariz. 108, 786 P.2d 959 (1990). The court remanded the matter to the Maricopa County Superior Court for resentencing.

On July 13, 1990, the trial court held a new aggravation/mitigation hearing. The State opted to present no new evidence. The Defense called Dr. Phillip Keene to show that the murder had not been committed in an especially cruel, heinous, or depraved manner. The Defense also presented the video deposition of Dr. Otto Bendheim and evidence of pathological intoxication. On August 3, 1990, the trial court again sentenced the Petitioner to death. Petitioner appealed the resentencing to the Arizona Supreme Court. The Court affirmed the sentence of death. State v. Samuel Villegas Lopez, 175 Ariz. 407, 857 P.2d 1261 (1993).

The Petitioner filed a Petition for Writ of Certiorari to the United States' Supreme Court. The United States' Supreme Court declined review. See Arizona v. Samuel Villegas Lopez, \_\_\_\_\_ U.S. \_\_\_\_\_, 114 S.Ct. 1578, 128 L.Ed.2d 221 (1994).

In 1994, Petitioner filed for Post Conviction Relief pursuant to Rule 32 of the Arizona Rules of Criminal Procedure. Petitioner filed a Petition and Supplemental Petition for Post-Conviction Relief, with attachments. The State filed a Response, with attachments. The Petitioner filed a Reply to the Response. Petitioner later filed a Motion for Rehearing, with the State filing a Response and Petitioner filing a Reply. All of these pleadings and their attachments are included in Appendix Part 1 and Appendix Part 2, filed with this Petition.

#### IV (A) INEFFECTIVE ASSISTANCE OF COUNSEL - BEFORE TRIAL

Samuel Lopez was arraigned on these charges on November 24, 1986 and this case assigned to the trial court. Sometime subsequent to that assignment, but well before trial, Petitioner requested that his attorneys consider a Motion for Change of Judge. Petitioner's request was based upon the fact that this particular trial judge had previously sentenced his brother, George Villegas Lopez, to death and his other brother,

Jose Villegas Lopez, to life imprisonment for their roles in the death of Macario Suarez in 1985. See State v. George Villegas Lopez, 158 Ariz. 258, 762 P.2d 545 (1988). By the time of sentencing, the presentence report mentioned the fact that the Petitioner's brothers had also been sentenced for murder. Despite the Petitioner's valid requests, counsel never filed any kind of motion.

It was ineffective assistance of counsel for Petitioner's counsel to fail to move for a new trial judge. Petitioner must show that counsel's performance fell below an objective standard of reasonableness, as defined by prevailing professional norms and that the deficient performance resulted in prejudice to the defense. Strickland v. Washington, 66 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984), State v. Atwood, 171 Ariz. 576, 832 P.2d. 593 (1992). The conduct of Petitioner's counsel fell below prevailing professional norms. After Petitioner's request, it would have been reasonable action by counsel to look into the circumstances surrounding the sentencings of George and Jose. In Jose's presentence report, there is a disturbing reference. One of the persons contacted by the presentence report writer was an acquaintance of the victim, Marcario Suarez. Ms. Rita Castellanos related Mr. Suarez's popularity in the community and indicated her poor opinion of Jose Lopez and his brothers. The presentence report writer even quoted this person's detrimental comments concerning the worthlessness of the Lopez brothers.<sup>1</sup> The trial judge in this matter saw this report and read this comment in April of 1986, only fifteen months before sentencing Samuel Villegas Lopez to death in June of 1987.

There were also disturbing matters contained in the presentence report for George Lopez. The last comment by the presentence report writer characterizes the defendant and his brother as extremely dangerous individuals.<sup>2</sup> The trial judge also read this comment in April of 1986.

A party is entitled to a change of judge without the need to show cause if requested within ten days of arraignment. Rule 10.2, Arizona Rules of Criminal

Procedure. Even if the Petitioner had not timely informed his attorneys of the unusual family circumstance in this case, a Rule 10.2 Motion could still have been possible beyond the ten day limit. In State v. Vickers, 138 Ariz. 450, 675 P.2d 710 (1983), the Arizona Supreme Court held that there was an appearance of impropriety when a judge that had sentenced the defendant to death in a prior case also tried same defendant for another potential death penalty case. The court noted that counsel had made no motions for change of judge. However, the court stated:

"In a death penalty case, which is treated differently from non-death penalty cases, we believe that there is an appearance of impropriety when a judge who has sentenced the defendant to death in a prior case, also tries the same defendant for another potential death penalty offense. The judge should have recused himself from trying this defendant for the second murder."

State v. Vickers, 138 Ariz. at 452, 675 P.2d at 712 (citations omitted). Had Petitioner's attorneys requested a change of judge under Rule 10.2, the time limit may have been set aside under the extremely unusual circumstances in this case.

Petitioner's counsel also failed to consider filing a Motion for Change of Judge for Cause under Rule 10.1 of the Arizona Rules of Criminal Procedure. A defendant is entitled to a change of judge if a fair and impartial hearing or trial cannot be had by reason of the interest of the assigned judge. Rule 10.1(a), Arizona Rules of Criminal Procedure. As no motion was even attempted, there was no record concerning the trial judge's potential bias or prejudice against the third member of the same family to stand before him accused of first degree murder. At the very least, the filing of such a motion would have transferred the matter to the criminal presiding judge for a decision whether, in a death penalty case, there was the appearance of bias or prejudice which could result in the need for change of judge.



Petitioner must show that counsel's performance fell below an objective standard of reasonableness, as defined by prevailing professional norms, and that the deficient performance resulted in prejudice to the defense. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Atwood, 171 Ariz. 576, 832 P.2d 593 (1992). Counsel fell below prevailing professional norms, especially in light of the holding in Vickers.

It must be noted that it would not have taken any great amount of investigation to discover these problems. Jose Lopez was represented by the Maricopa County Public Defender's Office at trial, as was Petitioner. As a Deputy Public Defender, Petitioner's trial attorney would have had easy access to the file of Jose Lopez, including this presentence report. The presentence report for George Lopez was available to anyone who asked to see the file kept by the Clerk of the Superior Court. Failure to listen to Petitioner's request and to conduct even a cursory examination into the matter falls below prevailing professional norms. Petitioner is also prejudiced because the impact of this statement can not be discounted. These comments were not only prejudicial to Jose and George Lopez, but later to Petitioner as well. It was ineffective assistance of trial counsel to fail to call this problem to the court's attention and to proceed to trial with yet another "worthless and extremely dangerous" Lopez brother before the same trial judge. For these reasons, the Petitioner is entitled to an evidentiary hearing to prove these claims. Petitioner is also entitled to relief in the form of a new trial before a different judge.

#### IV(B) INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL

On the first day of trial, a venire panel was called to the courtroom. That panel included Norman White, who was present. During jury voir dire, the judge asked the jurors if any of them or any members of their families or close personal friends ever served as law enforcement officers.

Several jurors answered this question affirmatively. One of them was juror Norman White. Mr. White mentioned a cousin with 12 years on the police department and close friends who were retired police officers. When asked if anything about those relationships would lead him to give any more or less credence to the testimony of the police officer simply because he or she were a police officer, Mr. White felt he'd be partially influenced by their good, solid police work. He also said he'd have more faith in the police officer and would give more weight to the testimony of a witness simply because he was a police officer. Mr. White was excused as a prospective juror.

Despite having been excused by the court, there is evidence that juror Norman White remained on the jury. Later during voir dire, juror Norman White provided information about his background. Eventually, Norman White was one of the people who ultimately sat as a juror at Petitioner's trial. Mr. White was a juror who voted for the final verdicts.

Petitioner must show that counsel's performance fell below an objective standard of reasonableness, as defined by prevailing professional norms, and that the deficient performance resulted in prejudice to the defense. Strickland v. Washington, 66 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984), State v. Atwood, 171 Ariz. 576, 832 P.2d. 593 (1992). The record indicates that juror Norman White remained after being excused and sat on the trial jury in this case. At this trial, a large number of police officers testified, all for the prosecution. No police officers were called to testify for the defense. Norman White's recorded answers to the court's questions showed that he was predisposed to believe police officers more than any other witness. Counsel was ineffective for failing to make sure that this juror left the courtroom. Counsel was also ineffective for failing to call this matter to the court's attention. Petitioner is prejudiced because someone predisposed to believe the police more than other witnesses remained on the jury for a trial where a large part of the State's case was proven by police officer testimony.

In ruling on the petition, the trial judge found that Petitioner had failed to prove that a stricken juror remained on the jury. The State, in its response to the petition, attached an affidavit from the court reporter.<sup>3</sup> A Petitioner is only required to raise colorable claims in the Petition and then prove those claims at an evidentiary hearing. It was error for the trial court to summarily dismiss this claim where an evidentiary hearing is clearly necessary to resolve this issue.

#### IV(C) INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING

##### 1. Failure to Object to Presentence Reports.

Prior to the first sentencing, a member of the Maricopa County Adult Probation Office prepared a presentence report. See Rule 26.4, Arizona Rules of Criminal Procedure. The trial court considered this presentence report before passing sentence. Defense counsel made no objection to this report. A second report was prepared by a different Adult Probation Officer before the second sentencing.<sup>4</sup>

The presentence reports in this matter are seriously flawed. First, they contain many inaccuracies, all of them detrimental to the Petitioner. In particular, the presentence report writers used an unproven subsequent bad act in analyzing the case. The first presentence report contains the following specific comments detrimental to the Petitioner:

"The Defendant was immediately considered an investigative lead in this case. He was known to reside in the immediate area and was considered by neighbors and police to be a known burglar."<sup>5</sup>

"On November 3, 1986 the Defendant allegedly confronted a nineteen year old woman with whom he had previously dated. He dragged her to the rear alley of 2825 W. Melvin and then forced her into a vehicle that the Defendant had been living in. The Defendant is accused of sexually

assaulting the victim. She managed to get away and call the police. They arrived on the scene and saw the Defendant seated in the car. He was immediately placed under arrest."<sup>6</sup>

The second presentence report also commented on this unproven bad act.

"The investigation continued and the defendant, Samuel Lopez, became a suspect. On November 3, 1986, Mr. Lopez was arrested after it was reported to the police that he had sexually assaulted a nineteen-year-old woman, who he had previously dated. According to the victim, Mr. Lopez dragged her to the rear alley of 2825 West Melvin and forced her into a vehicle in which the defendant had been living. The defendant allegedly sexually assaulted the victim, but she was able to flee and call police. Officers arrived and took the defendant into custody for that offense."<sup>7</sup>

Later commenting on these unproven allegations, one presentence report writer discussed them as follows:

"The Defendant reportedly tried to force his way into a woman's apartment the evening before the present offense. A few days afterwards he was accused of sexually assaulting another woman. I think the Defendant has proven that he is a danger to society and capable of committing the most heinous of crimes. I think the Defendant should be sentenced in such a fashion so that he will be permanently removed from the community. "<sup>8</sup>

Second, in the prior record section of the first report, the presentence report lists sixteen incidents as an adult. The second report repeats the information from the first report.<sup>9</sup> However, only five of these incidents actually resulted in a conviction for an offense: two previous felonies, two previous misdemeanors, and the present offenses.

The other eleven entries are notations of arrests with no disposition noted, arrests with no charges filed, or arrests and charges later dismissed.

There are two serious problems with the presentence report. First, a presentence report must be free from bias and innuendo. State v. Dixon, 21 Ariz. App. 517, 521 P.2d 148 (1974). The presentence report writers gave a great deal of credence to a sexual assault accusation against the Petitioner which had never been charged, let alone proven by the government. Second, the mere fact of arrest is not an aggravating factor without further proof. A sentencing court considering the imposition of a more severe punishment may not infer wrongful conduct from arrest or detention alone without looking at underlying facts. Brothers v. Dowdle, 817 F.2d 1388 (9th Cir. 1987). A trial court may not aggravate a sentence based upon the mere report of an arrest, with no evidence of underlying facts to demonstrate that a crime or some bad act was probably committed by the defendant. State v. Shuler, 162 Ariz. 19, 780 P.2d 1067 (1989). Of sixteen reported previous incidents, a full two-thirds of those are accusations that had never been reduced to a conviction. These unproven and unsubstantiated crimes outnumbered the actual previous convictions of the Petitioner by more than two-to-one. Using these non-items as noteworthy events in the report denied the Petitioner due process of law.

Petitioner received ineffective assistance of counsel where there was no challenge to these presentence reports. Petitioner must show that counsel's performance fell below an objective standard of reasonableness, as defined by prevailing professional norms, and that the deficient performance resulted in prejudice to the defense. State v. Atwood, 171 Ariz. 576, 832 P.2d 593 (1992). Counsel's failure to challenge these reports and their innuendoes fell below prevailing professional norms for a death penalty sentencing. Petitioner is prejudiced by the sentence of death twice imposed and by the failure of counsel to make a record for better review. Petitioner is entitled to an

evidentiary hearing to prove this claim. Petitioner is also entitled to relief in the form of a new sentencing before a different judge with a new report.

#### IV(C) INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING

##### 2. Failure to Properly Prepare Expert Witness.

Petitioner's trial counsel hired Dr. Otto Bendheim to meet with Petitioner for mitigation purposes. Dr. Bendheim met with Petitioner at the Madison Street Jail. Prior to sentencing in 1987, Dr. Bendheim gave Petitioner's trial lawyer a diagnosis of pathological intoxication. However, Dr. Bendheim's diagnosis was tentative for lack of further corroboration. Petitioner's lawyers at the first sentencing did not present Dr. Bendheim's report to the Court.

In 1990, Petitioner's lawyer for resentencing contacted Dr. Bendheim. Petitioner's second lawyer added more materials to the items presented to Dr. Bendheim. Specifically, Petitioner's second lawyer gave Dr. Bendheim the police reports from November 3, 1986 and an earlier presentence report. Dr. Bendheim found these items of use in his diagnosis and was able to strengthen his diagnosis of pathological intoxication. Dr. Bendheim's earlier report and more recent recorded deposition testimony were presented to the Court as mitigation evidence. The Court did not find that any mitigating circumstance existed at the second sentencing.

On review of the current record, current counsel for the Petitioner contacted Dr. Bendheim again. During this interview, Dr. Bendheim was given four items not previously submitted:

- 1). The pretrial statement of Pauline Rodriguez.
- 2). The pretrial statement of Yodilia Sabori.
- 3). The trial testimony of Pauline Rodriguez.
- 4). The trial testimony of Yodilia Sabori.

On review of these four items, Dr. Bendheim was able to even further strengthen his diagnosis of pathological intoxication.<sup>10</sup> There are two important points about these latest submittals to Dr. Bendheim. First, these items are not newly discovered. The statements and testimony of these two witnesses existed and were part of the record well before the sentencings in 1987 and 1990. The State submitted the first two items to its expert in 1990. However, neither of the Petitioner's previous attorneys submitted these items for Dr. Bendheim's consideration. Second, and more importantly, these statements are stronger evidence of pathological intoxication than any items previously submitted to Dr. Bendheim. Unlike the other materials submitted, these items are the testimony of people who not only knew Petitioner well, and saw him the night of the offense, but also saw the radical and sudden shift in Petitioner's demeanor only hours before the death of the victim.

Petitioner must show that counsel's performance fell below an objective standard of reasonableness, as defined by prevailing professional norms, and that the deficient performance resulted in prejudice to the defense. State v. Atwood, 171 Ariz. 576, 832 P.2d 593 (1992). Deficient performance is easily demonstrated in this case. As previously noted, the four items most recently submitted to Dr. Bendheim all existed before either the first and second sentencing. Dr. Bendheim's 1986 report and 1990 deposition testimony both clearly state what items were submitted to him for his consideration. These most recently noted items were never submitted. As to the Petitioner's actions, these statements are especially strong because these two people knew Petitioner. They knew he had been drinking that night, they saw a radical and sudden change in his demeanor and they saw this happen no more than hours before the offense. Failure to grasp the significance of these items and to include them in the materials submitted to Dr. Bendheim constituted deficient performance below prevailing professional norms.



Petitioner was also prejudiced by this failure. First, the Petitioner has been sentenced to death twice by the trial court. Second, the impact of Dr. Bendheim's diagnosis has been considerably weakened because it only gradually reached its current level. Think, for example, how much stronger Dr. Bendheim's testimony could have been in either 1987 or 1990 had all the relevant evidence been presented to him at one time. The undoubted impact of a more complete and stronger diagnosis in either 1987 or 1990 could have made a world of difference to the Petitioner. Third, the best evidence of pathological intoxication had not come to Dr. Bendheim's attention until now. A significant part of the problem with Dr. Bendheim's earlier diagnosis' was lack of information concerning the Petitioner's condition on the night of the offense. This is exactly what the materials from Pauline Rodriguez and Yodilia Sabori add; firsthand observation that night by people who knew the Petitioner and relevant to pathological intoxication. For all of these reasons, the Petitioner was prejudiced by the failure of his earlier attorneys to present these most relevant pieces of information to Dr. Bendheim. Petitioner is entitled to an evidentiary hearing to present proof of his claim. Petitioner is also entitled to relief in the form of a new sentencing before a different judge where Dr. Bendheim can give his best testimony in one piece.

#### IV(D) THE VICTIM IMPACT LETTERS PROCURED BY THE COURT

##### DENIED PETITIONER HIS RIGHT TO DUE PROCESS.

On May 20, 1987, an official of the Maricopa County Adult Probation Office submitted a presentence report for the Petitioner. Attached to that report and the supplement were 25 letters from the victim's acquaintances.<sup>12</sup> These letters were procured at the request of the presentence report writer.<sup>13</sup> The letters came from three basic sources: the victim's family, the victim's co-workers, and members of the victim's church congregation. A review of these letters reveals the following:



1. Fifteen of the twenty-five letters specifically discuss the character of the crime. These letters characterize the crime as hideous<sup>14</sup>, cruel<sup>15</sup>, brutal<sup>16</sup>, foul<sup>17</sup>, horrible<sup>18</sup>, senseless<sup>19</sup>, and vicious.<sup>20</sup>

2. Four letters directly address the character of the defendant. These letters characterize the Petitioner as a person capable of horrible and diabolical acts<sup>21</sup>, a menace to society<sup>22</sup>, and inhuman.<sup>23</sup>

3. Eleven letters specifically call for the judge to impose the death penalty. These letters characterize this sentencing request as for the ultimate punishment<sup>25</sup>, the maximum penalty or sentence<sup>25</sup>, or simply for the death sentence.<sup>26</sup>

4. Eight letters specifically refer to the victim as a good Christian, a God-fearing person, or make other similar references to the extent of religion in the victim's life.<sup>27</sup>

5. Six letters request that God aid the trial judge in his decision, asking that God guide that decision<sup>28</sup>, and that the Lord bless the trial judge.<sup>29</sup>

Victim impact letters procured by the State denied the Petitioner his right to Due Process under the United States and Arizona Constitutions. In Booth v. Maryland, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed. 2d 440 (1987), the United Supreme Court held that victim impact evidence is inadmissible at a capital sentencing hearing. In its holding, the United State's Supreme Court found that the death penalty must be suitably directed and limited so as to minimize the risk of a wholly arbitrary and capricious action. The imposition of the death sentence should not turn on arbitrary factors such as the character of the victim or the family's ability to articulate its grief. Evidence which creates qualitative distinctions among victims does not provide a principled way to distinguish cases in which the death penalty was imposed from the many cases in which it was not. Noting that the death penalty was a punishment different from all other sanctions, the United States Supreme Court found that the heightened Due

Process requirements of the death sentence required the exclusion of victim impact evidence.

In Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1990), the United States Supreme Court found that the Eighth Amendment erects no per se bar to the admission of statements regarding the victim and the impact on the victim's family. In Payne, the United States Supreme Court held that victim impact statements are admissible to balance the presentation of mitigation evidence, because the court allows the defendant to present virtually any evidence in mitigation. However, the Supreme Court's holding in Payne did not completely overrule its holding in Booth. Booth had excluded all victim impact statements. Payne had allowed the admission of statements regarding the victim and the impact on the victim's family. Booth had gone beyond those factors and prohibited the admission of statements regarding the family's opinions and characterizations of the crime, the defendant, and the appropriate sentence.

In this case, the letters discuss the victim and the impact on the victim's family at length. However, the letters go far beyond what is allowed under Payne. The letters contain harsh words describing the crime. Several letters make statements as to the character of the defendant. Finally, eleven letters specifically call on the trial judge to sentence the Petitioner to death. Whether or not a defendant is sentenced to the death penalty should be based upon the character of the defendant and the circumstances of the crime. The additional matters in these letters deny the Petitioner his Due Process Rights under Booth and Payne.

While not specifically discussed in either Booth or Payne, there are two further disturbing problems about these letters. First, several of the letters specifically note that the Adult Probation Officer who wrote the presentence report solicited the letters.<sup>30</sup> One letter points out this connection precisely. It is addressed to Judge D'Angelo in

care of the Probation Officer from the Maricopa County Adult Probation Office and begins:

"This letter is for the purpose of responding to your two requests as follows: 1. My relationship with my sister. 2. The punishment for the person committing the crime of murder.<sup>31</sup>

Of twenty-five letters received, eleven specifically reference the Adult Probation Officer who wrote the first presentence reports.<sup>32</sup> The Maricopa County Adult Probation Office is an arm of the Superior Court of Arizona. Its employees are part of the judicial branch of government. The record makes it very clear that an employee of the judicial branch of government solicited letters from the victim's family and friends specifically requesting their input on the punishment that the Petitioner should receive. This is precisely the kind of evidence that Booth found denied a defendant's right to Due Process.

Finally, there is another matter not specifically addressed in Booth nor Payne: the interjection of religious beliefs into the capital sentencing process. Nine letters make considerable references to the principles and beliefs of Christian religions.<sup>33</sup> Six letters specifically call on a Christian God to guide the trial judge in rendering sentence.<sup>34</sup> These extraneous and irrelevant pleas to the religious principles of the trial judge add a level of emotional overlay to the proceedings which impermissibly tainted them. A central theme of American law is the separation of church and state. The pleas in these letters for divine guidance and for the judge to uphold Christian principles cross the boundary over into arbitrary emotional factors which have no place in a capital sentencing.

In Arizona, the Arizona death penalty statute allows the judge to consider only evidence that bears upon aggravating circumstances. State v. Atwood, 171 Ariz. 576, 656, 832 P.2d 593, 673 (1992). Victim impact evidence does not tend to prove aggravating factors and the trial judge may not give aggravating weight to victim

impact evidence. The trial court may use such evidence as is relevant to rebut evidence offered in mitigation. Atwood, supra. In this case, mitigation evidence was offered concerning intoxication, pathological intoxication and the ineffectiveness of the weapon used. The victim impact letters do not address these mitigating factors in any relevant fashion.

In Arizona, the trial judge is presumed in imposing sentence in a capital case to focus on the relevant sentencing factors and to set aside irrelevant, inflammatory, and emotional factors. State v. Beaty, 158 Ariz. 232, 244, 762 P.2d 531, 519 (1988). In this case the extent of the letters, their pleas for vengeance and their exhortations to irrelevant and emotionally charged religious principles rebut the presumption that the trial judge was able to ignore them. The transcript of the imposition of sentence in 1987 is remarkably short; only nineteen pages to send a man to his death. However, there is one clear error in even the short comments by the judge. At one point the trial judge stated that the victim was undoubtedly either fighting the defendant and/or begging for her life. While there was testimony regarding defensive wounds, there was absolutely no evidence to show that the victim at any point begged for her life or ever said anything at all. There was no testimony as to any statements made at the time of the crime and no other evidence from which the trial court could possibly have reached this conclusion. The sheer weight of the victim impact evidence, its references to many irrelevant yet highly damaging matters, and a clear error of fact by the trial judge at sentencing are sufficient to rebut any presumption that the victim impact evidence had no effect upon this sentencing.

The trial court judge found that this issue was waived or precluded by failure to include it on direct appeal. However, Payne v. Tennessee was decided on June 27, 1991, over ten months after Petitioner's second sentencing. There was no objection at sentencing based upon Booth or Payne, so the issue could not be raised on direct appeal. Further the pleadings filed by Petitioner in this matter added that, if waived or

precluded, the matter should also be considered ineffective assistance of counsel at sentencing.<sup>35</sup> This issue was properly preserved and presented to the trial court. Petitioner is entitled to an evidentiary hearing to prove this claim. Petitioner is further entitled to relief in the form of a resentencing before another judge.

RESPECTFULLY SUBMITTED this 21<sup>th</sup> day of August, 1997.

LAW OFFICE OF  
ROBERT W. DOYLE

A handwritten signature in dark ink, appearing to read "R. Doyle", is written over a horizontal line.

ROBERT W. DOYLE  
Attorney for Petitioner

# **EXHIBIT J**

## OFFICE DISTRIBUTION

CHANGE OF VENUE	
JURY FEES	
REMANDS	

**SUPERIOR COURT OF ARIZONA**  
**MARICOPA COUNTY**

RECEIVED

PROCESSED

APR 02 '90

APR 02 '90

Clerk of the Court

DIST. CENTER

CLERK OF THE COURT

5

Code 3-29-90 Date HON. PETER T. D'ANGELO A.M. Schroeder  
 Judge/Commissioner/Pro Tem Deputy  
 NO. CR-163419

STATE OF ARIZONA

County Attorney  
 By: Paul H. Ahler

vs.

SAMUEL VILLEGAS LOPEZ

George M. Sterling, Jr.

Kirk Fowler  
 8306 E. Welsh Trail  
 Scottsdale, AZ 85258

M.B. Bayless, Ph.D.  
 2034 North 15th Avenue  
 Phoenix, AZ

Dispo

Upon stipulation of the parties, and the mandate of  
 A.R.S. §13-4013(b),

IT IS ORDERED appointing Kirk Fowler as a contract  
 private investigator to assist the Defendant and his Court  
 appointed attorney by providing investigative services as  
 directed by said Defendant and attorney as necessary for  
 resentencing.

IT IS FURTHER ORDERED authorizing the Court appointed  
 counsel to retain at county expense the services of M.B. Bayless,  
 Ph.D. as a mental health expert to assist the Defendant and  
 his court appointed attorney for the purposes of resentencing; and

IT IS FURTHER ORDERED initially authorizing services in  
 the sum of \$650.00 with leave for additional sums upon further  
 application by the Defendant or his counsel, all in  
 accordance with formal written Order signed by the Court  
 March 29, 1990.

022

(18)

# **EXHIBIT K**



OTTO I. BENDHEIM, M.D.  
CAMELBACK PROFESSIONAL BUILDING  
3051 NORTH 34TH STREET  
PHOENIX, ARIZONA 85018  
TELEPHONE 602-955-1090

Private and Confidential  
Psychiatric Consultation

PSYCHIATRIC EXAMINATION:	Samuel Lopez
CHARGE:	1st Degree Murder/Armed Burglary/Rape CR# 163419
CAUSE NUMBER:	June 30, 1962
DATE OF BIRTH:	June 8, 1987
DATE OF EXAMINATION:	June 11, 1987
DATE OF DICTATION:	

Upon the request of Maricopa County Public Defender's Office, Joel Brown, Esquire, I examined, psychiatrically, Mr. Samuel Lopez. The examination took place at the Madison Jail Facility on June 8, 1987.

REVIEW OF RECORDS

This office had occasion to receive a call from defense counsel, Mr. Brown, regarding some pertinent background information on the defendant. Mr. Lopez has been tried and convicted of 1st Degree Murder/Burglary and Sexual Assault.

Mr. Brown had expressed an opinion that this particular act of violence was out of character for Mr. Lopez; character witnesses describe him as a mild person who has serious personality difficulties and changes when drinking. "He is a different person when he drinks".

Through the courtesy of Mr. Brown, the following records were received for review prior to the evaluation:

- a. Departmental reports regarding the incident which gave rise to prosecution from the City of Phoenix Police Department

Also included in these reports were records from the defendant's previous charges and arrests

- b. Statement by Mr. Hernandez, acquaintance to defendant—He states that when one incident occurred involving Sammy Lopez and a babysitter for Mr. Hernandez "Sammy was drunk at the time; usually when Sammy is drunk he is a

OTTO L. BENDHEIM, M.D. CONTINUATION

Page 2  
Samuel Lopez

REVIEW OF RECORDS (Cont'd)

very mean guy, when he is not drinking he is mild and meek and won't even talk to you".

- c. In addition, there were reports giving descriptions of the scene of the crime and circumstances prevailing

OTTO E. BENDHEIM, M.D. CONTINUATION

Page 3  
Samuel LopezEXAMINATION

Identification- This is young adult Hispanic male, who stands 5'7", weighs 142 pounds, has dark hair, brown moustache, tattoos on both arms, well developed, well nourished, clean in appearance.

History

Family- Mr. Lopez informs me that he was born 24 years ago in Peoria, he is one of eight siblings, three of whom are, at present, in penitentiaries, two for 1st degree murder, one for armed robbery. The defendant lives with his mother, he has never married.

He does not know his father who left when the defendant was a very small child.

Education- He had a 10th grade education at Carl Hayden High School and then quit due to ditching school with a total lack of interest in his education.

Habits- Mr. Lopez began to drink at age 18 (the defendant minimizes the amount of drinking he does) He states that he has been intoxicated on relatively few occasions, one being the time of his arrest several weeks after the incident which gave rise to this prosecution. He states, however, that he was not drunk at the time of the event itself.

Mr. Lopez states that he is unaware of "pathological intoxication", a change of behavior, personality and character with unaccountable conduct with even minimal alcohol. This question was important due to the statements by others that they noticed serious personality changes when under the influence of alcohol.

Mr. Lopez states that he has been on Marijuana, "lots of it", since age 16 as well as some "paint sniffing". He states that he has not participated in consumption of other illegitimate drugs.

The defendant relates that he has had no psychiatric exposure in the past, has never been admitted to a mental institution and is unaware of any mental illness.

Occupation- He has worked as a mason; he last worked in 1986 for about 3 months but "the pay wasn't good enough and I quit, they gave me only minimum wages".

Mental Status

Upon examination, I found the defendant to be of low-normal intelligence, memory, attention and concentration were fairly good. He appeared animated, vivacious, talkative, appears quite calm. There was no evidence of depression. He has good facial expression; he is very responsive. I found no evidence of hallucinations or delusions.

He performs counting and calculation tests well including serial 7's. He knew at least the last two Presidents of the United States, "Reagan and Carter".

OTTO L. BENDHEIM, M.D. CONTINUATION

Page 4  
Samuel Lopez

EXAMINATION (Cont'd)

He was well oriented and knew the issues involved in his defense. He told me, again and again, that he believes that he had not been drinking at the time of the incident but at the time of his arrest, he was quite intoxicated.

The defendant states that he is not particularly aware of any mood or personality changes at any time, that he considers himself a pretty easy going, calm person.

Mr. Lopez conducted himself quite properly during the examination and was co-operative, pleasant throughout evaluation. He displayed no objectionable personality traits during the interview. I felt he remained vague in one particular area, that of his alcohol consumption. He reiterated that he is totally unaware of any unpleasant reactions to alcohol, that he had only very few intoxications and that he never considered himself as having problems. This did not pertain to his own estimate of Marijuana consumption. He states that he has been "high on Marijuana" on many occasions and that there had been problems with "paint sniffing" in the past.

OPINION

The following opinion is expressed, in response to the usual mitigation questions, Rule 26.5, based upon my examination of this defendant.

1. The present mental condition of the defendant, at the time he committed the offense, if that is ascertainable

I am unable to answer this question accurately; it is possible that the defendant was intoxicated and may have had a "pathological intoxication", an unusual reaction to even minor amounts of alcohol. (Although the defendant denies drinking at that time)

2. If you determine that the defendant probably suffered from a mental disease or defect at the time of the offense, the relation of such disease or defect to the alleged offense

I found no evidence of psychosis or total unawareness of his conduct at the time of the offense unless he was, indeed, suffering from "pathological intoxication" which cannot be determined.

I found no evidence of mental illness with the possible exception of substance abuse disorder, particularly Marijuana and paint sniffing, but there is no evidence that this took place just prior to the incident. However, pathological intoxication cannot be entirely ruled out.

3. A determination of whether, as of the time the defendant committed the crime, the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution

If the defendant, indeed, committed the offense, which he denies, I found no evidence that he would have been unaware of the wrongfulness of his conduct or that he would have been unable to conform his conduct to the requirements of the law unless he was suffering from "pathological intoxication".

4. Defendant's ability to be rehabilitated

This is questionable in as much as the defendant has a prior record of offenses. The impression gained during our one interview was rather favorable and his spirit of co-operation and comprehension would make any rehabilitative and therapeutic efforts more meaningful.

OTTO L. BENDHEIM, M.D. CONTINUATION

Page 6  
Samuel Lopez

OPINION (Cont'd)


5. If defendant is rehabilitable, your recommendation for place, form and term of rehabilitation treatment

Complete sobriety and abstinence from all illegitimate drugs would be the most necessary requirement. In addition, acquisition of occupational skills and steady employment would be of great benefit.

6. Whether the defendant is a danger to self, others and/or the community and the best method of controlling that danger

I find it difficult to answer the question whether this defendant is "dangerous to self or others and/or the community". I do not consider him particularly dangerous to himself but there is, of course, the possibility of dangerousness to others in view of the present and past convictions.

Respectfully submitted,



OTTO L. BENDHEIM, M.D.

OLB:rjm

# **EXHIBIT L**

## EXHIBIT 1

STATE OF ARIZONA -- COUNTY OF MARICOPA -- ADULT PROBATION DEPARTMENT

P.O.: ROBERT CHERKOS

PROB. #

PAGE 1 OF 2

NAME	SAMUEL VILLEGAS LOPEZ	RACE	Mex	SEX	M	HT	5'7"
RESIDENCE	2701 West McKinley, #1	EYES	Bro	HAIR	Blk	WT	150
	Phoenix, AZ	DOB	6-30-62			AGE	24
PHONE	233-0589	MESSAGE PHONE	None	CITIZEN OF	USA		
AKA OR MAIDEN	None	BIRTHPLACE	Phoenix, AZ	DRIVER'S LIC. NO.	Unknown		
ID MARKS	None	S.S. NO.	527-39-3897	FBI NO.	723 247 WF		
EMPLOYER/ADDRESS/PHONE	Unemployed	BOOKING NO.	890309	CHILDREN:	0		
OCCUPATION	Laborer	EDUCATION	10				
MARITAL	Single	RELIGION	Catholic				

## CURRENT OFFENSE

CAUSE NO.	CR163419	OFFENSE DATE	10-29-86	NCIC	0949D
CHARGE	Count I: Murder in the First Degree, a Class 1 and Dangerous Felony				
A.R.S. NOS.	13-1105, 1101, 812, 703, 1406, 1507, 1508, 903				
CAUSE NO.	CR163419	OFFENSE DATE	10-29-86	NCIC	1099D
CHARGE	Count II: Kidnapping, a Class 2 and Dangerous Felony				
A.R.S. NOS.	13-1304, 1301, 702, 801, 812				

DATE OF ARREST	11-3-86	ARRESTING AGENCY	PHPD
DATE INCAR.	11-4-87	REL. DATE	None
DAYS IN JAIL THIS ARREST	201	REL. STATUS	Jail
		REMAND JUVENILE COURT/DATE	--NO

DEFENSE COUNSEL	Joel Brown, DPD	PROSECUTOR	Paul Ahler
GUILTY BY/DATE	Jury 4-27-87	SENTENCING JUDGE	PETER T. D'ANGELO
DATE OF SENTENCE	5-27-87		
CODEF/DISPOS	None		

## CRIMINAL HISTORY

## WARRANTS OUTSTANDING

	NO. CONVICTIONS:	FEL 2	MISD 2	JUV 1	CASE NO.	CHARGE	STATE
NO. INCARCERATIONS:	PRISON 2	JAIL					
	ESCAPE	OTHER					
NO. SUPERVISIONS:	PROB	PAROLE 2			OTHER:		

## GENERAL INFORMATION

NARCOTICS/ALCOHOL HISTORY A-Alcohol, A-Marijuana  
TREATMENT/PROGRAMS None

MILITARY HISTORY: NOT APPLICABLE  
BRANCH TYPE DISCH.  
ENTRY DATE DISCH. DATE

## SPOUSE/RELATIVES/CHILDREN

NAME	RELATION	AGE	ADDRESS	PHONE
Concha Lopez	Mother	57	2701 West McKinley, #1, Phoenix, AZ	233-0589

05756/05-20-87/Ginny



## STATE OF ARIZONA -- COUNTY OF MARICOPA -- ADULT PROBATION DEPARTMENT

P.O.: ROBERT CHERKOS

PROB. #

PAGE 2 OF 2

<u>NAME</u>	SAMUEL VILLEGAS LOPEZ	<u>RACE</u> Mex	<u>SEX</u> M	<u>HT</u> 5'7"
<u>RESIDENCE</u>	2701 West McKinley, #1	<u>EYES</u> Bro	<u>HAIR</u> B1k	<u>WT</u> 150
	Phoenix, AZ	<u>DOB</u> 6-30-62		<u>AGE</u> 24
<u>PHONE</u>	233-0589	<u>MESSAGE PHONE</u> None	<u>CITIZEN OF</u> USA	

CURRENT OFFENSE

<u>CAUSE NO.</u>	CR163419	<u>OFFENSE DATE</u>	10-19-86	<u>NCIC</u>	1199D
<u>CHARGE</u>	Count III: Sexual Assault, a Class 2 and Dangerous Felony				
<u>A.R.S. NOS.</u>	13-1406, 1401, 3821, 701, 702, 801, 812				
<u>CAUSE NO.</u>	CR163419	<u>OFFENSE DATE</u>	10-19-86	<u>NCIC</u>	2249D
<u>CHARGE</u>	Count V: Burglary in the First Degree, a Class 2 and Dangerous Felony				
<u>A.R.S. NOS.</u>	13-1508, 701, 702, 801, 812				

482

THE STATE OF ARIZONA  
Plaintiff

vs.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

HONORABLE PETER T. D'ANGELO

CRIMINAL DIVISION 10

SUPERIOR COURT

PRESENTENCE INVESTIGATION

PRESENT CHARGE:

Count I: Murder in the First Degree, a Class 1 Felony,  
Count II: Kidnapping, a Class 2 and Dangerous Felony,  
Count III: Sexual Assault, a Class 2 and Dangerous  
Felony; Count V: Burglary in the First Degree, a Class 2  
and Dangerous Felony; originally charged as Count I:  
Murder in the First Degree, a Class 1 Felony, Count II:  
Kidnapping, a Class 2 Felony, Counts III and IV: Sexual  
Assault, Class 2 Felonies, Count V: Burglary in the First  
Degree, a Class 2 Felony.

JURY VERDICT:

April 27, 1987.

DEFENSE COUNSEL:

Joel Brown, Deputy Public Defender.

PRESENT OFFENSE:

The following information is taken from Phoenix Police  
Departmental Report #86-144475 and corresponding supplemental reports:

On October 29, 1986, at approximately 1:30 a.m., the  
defendant broke the front window and gained entry to the apartment occupied by  
Estefana Holmes, age fifty-nine, at 2822 West Polk. The defendant and victim  
struggled. He tied her pajama bottoms around her eyes and stuffed a lace  
scarf down her throat. The defendant sexually assaulted the victim and  
stabbed her repeatedly, primarily in the left chest area. There were also  
stab wounds to her face, arms, and head. There was bruising over her entire  
body. Her throat was cut.

When the victim did not show up for work the next day her  
co-workers became worried because she had not missed a day in eight years.  
The police were called and at approximately 11:00 a.m., on October 29, 1986,  
the body of Estefana Holmes was found on her sofa bed. There were signs of a  
struggle throughout her entire apartment. There were blood stains on the  
walls, in the bathroom, kitchen and living room/bedroom areas. It was also  
believed that several items of value were removed.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

The defendant was immediately considered an investigative lead in this case. He was known to reside in the immediate area and was considered by neighbors and police to be a known burglar. The defendant was a suspect in a burglary to the victim's home which occurred approximately one month prior to her death. On the evening of October 28, 1986, the defendant was also a suspect of an attempted burglary to a neighbor's home.

On November 3, 1986, the defendant allegedly confronted a nineteen-year-old woman whom he had previously dated. He dragged her to the rear alley of 2825 West Melvin and then forced her into a vehicle that the defendant had been living in. The defendant is accused of sexually assaulting the victim. She managed to get away and call the police. They arrived on the scene and saw the defendant seated in the car. He was placed under arrest. Detective Butler who was investigating the homicide questioned the defendant. He denied committing any crime. The defendant's fingerprints and palm prints were found in the home of Estefana Holmes. He was booked into the Maricopa County Jail.

#### RELATED OFFENSES:

The jury found the defendant not guilty in count IV of the indictment. There have been no charges filed emanating from departmental report #86-147145 alleging sexual assault on November 3, 1986. These matters have already been discussed.

#### DEFENDANT'S STATEMENT:

The defendant made a few comments but preferred not to participate in a presentence interview. He did not fill out a presentence questionnaire. The defendant was given the option to change his mind but at the time of this writing he has chosen not to do so.

The only statement the defendant would like to make regarding the present offense is that he is innocent. The defendant also denies involvement in the related offense.

#### STATEMENT OF VICTIMS:

Estefana Holmes is survived by her son, Sammy Castillo. He stated that he will always have a sense of loss and that he can never forgive the defendant. Nothing the State can do can replace his mother or make up for his loss but he does recommend that the Court sentence him to the maximum possible penalty. He stated that the defendant's actions permanently damaged those closest to the victim. He expressed the horror and trauma he experienced, especially after seeing the photograph of his mother. He has been experiencing nightmares and has had to see a therapist. He is taking

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

antidepressant medication. He lost his job and only recently was able to find work. Mr. Castillo expressed feelings of helplessness, anger, depression, and thoughts of self-destruction. He hopes that his life can someday be put back in order.

Estefana Holmes comes from a large, extended family. She is survived by nine siblings. I have had telephone conversation with her brother, Victor Arguijo. He has also written a letter expressing his sentiments regarding his own personal loss and those of his family. He describes the victim as a good and loving person that touched the lives of others. Mr. Arguijo recommends that the defendant be sentenced to the maximum possible penalty. His letter will be attached to this report.

Another brother of the victim, Ben Arguijo, and his wife, Glenda, have also submitted a letter. They insist that the defendant receive the death penalty. This and other letters from family and friends will be attached to the presentence report.

I met with Bertha Anderson, the victim's sister-in-law. Ms. Anderson stated that she and the victim were like sisters. She hopes the Court will consider how good a person Estefana Holmes was. She stated that she did not have a mean bone in her body and never hurt anyone. She recommends the defendant receive the death penalty. The manner in which she died was cruel and she was forced to fight hard for her life. She stated that there must be justice for the victim. Ms. Anderson stated that the incident has had a detrimental affect on her. She is still taking tranquilizers and had to be taken to the hospital after learning of the present offense. Ms. Anderson also requests that the Court consider how much the entire family has suffered as a result of the defendant's actions.

#### STATEMENT OF REFERENCES AND INTERESTED PARTIES:

Public Defender Joel Brown recommends the defendant be sentenced to life imprisonment with all charges to run concurrently. He does not think that the defendant's past shows a propensity towards violence. He stated that the defendant was intoxicated at the time of the offense.

Deputy County Attorney Paul Ahler will ask for the death penalty on count I and a consecutive sentence on all remaining counts. He described the victim as being elderly and harmless. She was raped and mutilated in a cruel, heinous, and depraved manner. She was made to suffer and Ahler thinks that the defendant must pay the ultimate price for his actions.

Detective Butler from the Homicide Division of the Phoenix Police Department recommends that the defendant receive the death penalty

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

based on the manner in which the victim was made to suffer before she was murdered. He thinks that at the very least, the defendant should be removed from society forever.

No one from the defendant's family has come forward to state an opinion. The defendant did not want me to contact anyone in particular. I have tried to telephone the defendant's mother but she has not been available for comment.

PRIOR RECORD:

JUVENILE:

The following information is taken from the Maricopa County Juvenile Court Center:

<u>ARREST DATE</u>	<u>PLACE OF ARREST</u>	<u>CRIME/DISPOSITION</u>
5-21-79	Phoenix, AZ	Two counts curfew/Placed on probation 10-18-79.
5-30-79	Phoenix, AZ	Runaway, 3 counts/Placed on probation 10-18-79.
6-18-79	Phoenix, AZ	Curfew/Adjusted, counseled, and warned 10-18-79.
10-26-79	Phoenix, AZ	Burglary in the third degree, theft/The case was terminated, closed and the defendant was released from probation on 2-21-80.

ADULT:

The following information is taken from the Phoenix Police Department, the Maricopa County Sheriff's Office, the Department of Corrections, the Adult Probation Department, the F.B.I., and standard LEJIS materials:

<u>ARREST DATE</u>	<u>PLACE OF ARREST</u>	<u>CRIME/DISPOSITION</u>
10-17-80	Phoenix, AZ	Misconduct involving a weapon, disorderly conduct/No disposition listed.
2-21-81	Phoenix, AZ	Aggravated assault/No formal charges filed, prosecution declined.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

3-8-81	Phoenix, AZ	Shoplifting/No disposition listed.
3-20-81	Phoenix, AZ	Burglary/This was a residential burglary, the defendant and 3 other juveniles broke into a home and removed items. The defendant entered into a plea agreement under CR118499. Prior to sentencing, the defendant was arrested for several more burglaries. The State withdrew from the plea agreement. This cause was eventually dismissed when a new plea agreement was made under CR121406.
5-29-81	Phoenix, AZ	Burglary and theft/This was a residential burglary and the defendant was charged under CR121952. It was dismissed per plea agreement.
6-6-81	Phoenix, AZ	Armed robbery/Charges dismissed.
6-12-81	Phoenix, AZ	Burglary/This was also a residential burglary charged under CR121952. This cause was dismissed per the plea agreement.
6-16-81	Phoenix, AZ	Burglary/The defendant was indicted under CR122183 for residential burglary. This cause was dismissed per plea agreement.
7-12-81	Phoenix, AZ	Burglary/Under CR121406 the defendant pled guilty to burglary in the second degree, a class 3 felony. The defendant was sentenced to the Arizona Department of Corrections for a period of 3.75 years on 11-5-81.
12-22-83	Phoenix, AZ	Shoplifting/The defendant pled guilty and was sentenced to 6 days in jail on 3-27-84. This offense occurred 2 weeks after the defendant was released on parole.
5-23-84	Phoenix, AZ	Possession of liquor in a park/No disposition listed. The defendant was granted an absolute discharge from the Department of Corrections for CR121406 on 6-8-84.
12-15-84	Phoenix, AZ	Criminal trespassing and disorderly conduct/The defendant pled guilty to the trespassing and was sentenced to 3 days in jail on 12-16-84.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

7-25-85	Phoenix, AZ	Loiter in a park/No disposition listed.
8-24-85	Phoenix, AZ	Inhaling toxic substances, aggravated assault, escape in the second degree, and resisting arrest/The defendant pled guilty to resisting arrest, a class 6 undesignated offense under CR151615. The Court designated the offense a felony and sentenced the defendant to one and one-half years with Department of Corrections. In this offense the defendant struggled with officers and attempted to flee when he was being placed under arrest for paint sniffing. All the other charges were dismissed.
7-16-86	Phoenix, AZ	Burglary/No disposition listed.
11-3-86	Phoenix, AZ	The present and related offenses.

The defendant was granted an absolute discharge for his sentence under cause number CR151615 on October 14, 1986. A review of the defendant's Department of Corrections file did not reveal any unusual events. During his first sentence there were fifteen rule infractions but they were generally considered to be minor. Overall, his performance while in the institutions was considered to be satisfactory. The defendant received some vocational training in masonry. When the defendant was paroled during the later part of 1983 he did not supply proper addresses and there was some difficulty within the home. The parole officer noted that the defendant was having difficulty with his mother and she did not particularly want to have him staying with her. When the defendant was paroled after serving his second prison sentence, he did not cooperate with the parole officer and a warrant was issued on September 22, 1986. The defendant relocated without permission and did not notify the parole officer of his whereabouts.

SOCIAL HISTORY: The defendant did not supply any information of his recent family history. The following information is taken from other presentence reports and the Department of Corrections file:

Family: The defendant was born on June 30, 1962, in Peoria, Arizona. His parents are Concha and Arcadio Lopez. The defendant is the second youngest of eight children. The father and mother were separated when the defendant was approximately four years old. He was raised by the mother. An older brother, Steve Lopez, served a prior prison sentence for armed robbery. Two other brothers, George and Jose, were convicted in 1986 for first degree murder. They beat an illegal alien and caused his death using a tire iron and stabbing him. George Lopez was sentenced to death and Jose was given a life sentence.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

In other presentence reports the defendant did not mention any traumatic or serious events while he was growing up. He stated that the biggest problem within the family was financial. Juvenile records indicated that Ms. Lopez was unable to exercise control over her children. The Department of Corrections file contained comments about conflict between the defendant and his mother. She did not want him living with her following his parole in 1984.

Education: The defendant completed the tenth grade. While with the Department of Corrections he studied masonry.

Marital: The defendant has never been married.

Employment: Following his release from prison in 1984, the defendant went to work with his brother, Frank Lopez, doing landscaping. The defendant had worked for an individual by the name of Jessie Gonzalez until 1985. In 1985, the defendant also worked for Phoenix Tent and Awning as a laborer. For three months in 1985 and 1986, he worked for A & L Duct and Pumps where he was a laborer. The defendant has worked various odd jobs for cash.

Health: The defendant apparently is in good health and suffers no disabilities or limitations.

Mental Health: Psychological testing done at the Department of Corrections in 1981 and again in 1985 indicated the defendant had a full scale IQ of 108 placing him in the high average range. He was described as being a moderately introverted person with a somewhat pessimistic outlook on life and also showed passive-aggressive tendencies. Neither of the reports allude to alarming psychological or sexual dysfunction.

Substance Use: The defendant was reportedly intoxicated when he committed the present and related offenses. He also has a history of marijuana use and paint sniffing.

#### FINANCIAL STATUS AND EVALUATION:

The defendant has no income and there is no information to indicate he has any assets. When arrested, he was living out of a friend's car.

Sammy Castillo, the victim's son, indicated that funeral expenses came to \$2,575.79. He requests restitution in that amount. Copies of the billings will be attached to this report.

The probation officer has considered the following factors in determining the manner of payment:



SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

1. Defendant's age: twenty-four.
2. Defendant's income: none.
3. Defendant's assets: none.
4. Defendant's education: tenth grade.
5. Defendant's obligation to support dependents: none.
6. Defendant's employment history: poor.
7. Defendant's prospects for employment: poor.
8. Others: none.

Based on the above, it is recommended the defendant pay restitution, through the Clerk of the Court per the attached restitution ledger sheet.

DISCUSSION AND EVALUATION:

The defendant has been found guilty by jury verdict of murder in the first degree, kidnapping, sexual assault, and burglary. It will be my recommendation that the defendant be sentenced to more than the presumptive term on all counts to run consecutively.

Estefana Holmes was brutally and heinously murdered by the defendant. It is difficult to imagine, let alone describe, the horror and terror she must have experienced at the hands of the defendant. The fact that she suffered greatly is without question. Her family, loved ones, and friends have also suffered. The victim's survivors have all asked that the defendant pay the ultimate price for his act.

The defendant's juvenile referral history was mostly status offenses; curfew and running away. He apparently lived in a dysfunctional family setting with the mother providing few controls. As a young adult the defendant turned to theft and burglary offenses. He also committed several public order crimes. His assaultive behavior was mostly in the form of resisting arrest. The defendant served a second prison sentence for this type of behavior. The defendant had a pattern of alcohol and substance abuse but there was little or no reference to prior drug addiction. Previous reports and evaluations contained in the probation and Department of Corrections files do not provide much insight into why the defendant committed the present offense. The defendant himself maintains his innocence and would not participate in a presentence interview.

The defendant reportedly tried to force his way into a woman's apartment the evening before the present offense. A few days afterwards he was accused of sexually assaulting another woman. I think the defendant has proven he is a danger to society and capable of committing the most heinous of crimes. I think the defendant should be sentenced in such a fashion so that he will be permanently removed from the community.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

In making the recommendation below, the following factors were considered:

1. The defendant's actions were cruel and depraved.
2. The victim suffered and must have experienced tremendous horror.
3. The victim was fifty-nine years of age.
4. The defendant committed the present offense two weeks after he was granted a discharge from parole.
5. The victim's survivors have suffered and experienced emotional distress.
6. Statements of the interested parties.
7. The defendant has been convicted of two prior felonies and sentenced to prison twice.
8. The safety and interest of the community.
9. The defendant's age.

RECOMMENDATION:

Count I:

It is respectfully recommended that the defendant be sentenced as prescribed by law.

Counts II, III, and V:

It is respectfully recommended that the defendant be sentenced to the Department of Corrections for more than the presumptive term, each count to run consecutive.

It is further recommended the defendant pay a \$100.00 felony penalty assessment to the Victim Compensation Fund for each count. Payment is to begin at the discretion of the Department of Corrections.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

It is further recommended the defendant pay total  
restitution of \$2,575.79 per the attached ledger sheet.

Respectfully submitted,

H. C. Duffie  
Chief Probation Officer

I have reviewed and considered  
the probation officer's report.

By: Robert Cherkos  
Robert Cherkos  
Deputy Adult Probation Officer  
262-3985

Judge: John F. Scungles  
Date: 6/22/87

RC:gw:0574G  
May 20, 1987

THE STATE OF ARIZONA  
Plaintiff

vs.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

HONORABLE PETER T. D'ANGELO

CRIMINAL DIVISION 10

SUPERIOR COURT

DATE OF SENTENCE: 5-27-87

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SUPPLEMENTAL REPORT

The defendant decided to participate in a presentence interview on May 22, 1987. The defendant was thorough in his completion of the presentence questionnaire and he was cooperative during the interview.

The information under the social history is essentially correct. The defendant stated that he regretted never completing his G.E.D. while he was in prison. He plans to continue with his education. The defendant listed three other previous employments: National Metals Company, Arizona Woodcraft Company, and Wise Guys Car Wash. The defendant stated that he is in good health and has no disabilities or limitations. He denies that he has an alcohol or drug problem. He stated that he has used marijuana and inhaled toxic vapors in the past but did not consider himself to be a regular user nor "hooked" on any drug. The defendant does not think that alcohol or drugs played a part in any of his prior offenses. The defendant admits that he drank two or three beers on the evening he was arrested on November 3, 1986.

Regarding the present offense, the defendant wrote, "I didn't do this offense at all so I was very surprised when they told me what I was being charged for. I'm innocent and sorry for what happened to that lady."

The defendant requests the smallest sentence possible. His plans for the future are to find a good job, put some money in the bank, buy a house, fall in love with a young lady, get married, and have two or three children. He would like to make sure that they complete high school and would try to make them understand that drugs are no good and that they should obey the law.

I did not get the impression that the defendant's initial decision to not participate in a presentence interview was out of disrespect or hostility but was more out of resignation. I did not consider this initial decision to be a sentencing factor nor do I think his cooperation to be one either.

SAMUEL VILLEGAS LOPEZ  
Defendant

CAUSE NO. CR163419

RECOMMENDATION:

This officer will stand with the original recommendation.

Respectfully submitted,

H. C. Duffie  
Chief Probation Officer

I have reviewed and considered  
the probation officer's report.

By: Robert Cherkos  
Robert Cherkos  
Deputy Adult Probation Officer  
262-3985

Judge: John T. Sanchez

Date: 6/22/87

RC:d1w:0687J  
May 26, 1987

# **EXHIBIT M**

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 IN AND FOR THE COUNTY OF MARICOPA

3  
4 STATE OF ARIZONA,

5 PLAINTIFF,

6 V.

7 SAMUEL VILLEGAS LOPEZ,

8 DEFENDANT.

PUBLIC DEFENDER  
FEB 25 1992  
APPEALS RECEIVED  
NO. CR163419  
CR-90-0247

9  
10 PHOENIX, ARIZONA  
11 JULY 13, 1990  
12 AFTERNOON SESSION

13 BEFORE: THE HONORABLE PETER D'ANGELO, JUDGE  
14  
15  
16

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
18  
19  
20  
21  
22

23 PREPARED ON APPEAL  
24 ORIGINAL  
25 COPY

COLLEEN M. GRUNOW  
RPR, CM, CSR

SUPERIOR COURT

A P P E A R A N C E S

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FOR THE PLAINTIFF: MR. PAUL AHLER, DEPUTY COUNTY ATTORNEY  
FOR THE DEFENDANT: MR. GEORGE STERLING, COURT APPOINTED  
COUNSEL

I N D E X

<u>WITNESS:</u>	<u>EXAMINATION BY:</u>	<u>ON PAGE:</u>
DEAN, ROBERT T.	MR. AHLER	17
	MR. STERLING	20
	MR. AHLER	25
	MR. STERLING	35
BAILEY, RICK	MR. AHLER	52
	MR. STERLING	55
	MR. AHLER	57



1 PROCEEDINGS

2  
3 THE COURT: CR163419.

4 MR. AHLER: PAUL AHLER ON BEHALF OF  
5 STATE.

6 MR. STERLING: GEORGE STERLING BEHALF OF  
7 DEFENDANT. YOUR HONOR, DEFENDANT IS PRESENT AND IN CUSTODY.

8 THE COURT: MR. AHLER, DID I UNDERSTAND  
9 FROM THE EARLIER SESSION THAT YOU'RE NOT GOING TO PRESENT  
10 ANYTHING BY WAY OF TESTIMONY OR EVIDENCE?

11 MR. AHLER: I HAVE A WITNESS HERE WHO I  
12 INTEND TO CALL ON REBUTTAL AND I THINK WE NEED TO LAY A  
13 LITTLE BIT MORE FOUNDATION.

14 THE COURT: VERY WELL. CALL YOUR NEXT  
15 WITNESS, PLEASE.

16 MR. STERLING: WELL, YOUR HONOR, IF I  
17 COULD, TWO NOTES OF PROBLEMS THAT I HAVE. MY NEXT WITNESS,  
18 YOUR HONOR, IS ONE DR. OTTO BENDHEIM WHO I WILL CALL TO  
19 TESTIFY BEFORE THE COURT BY MEANS OF A VIDEOTAPE EXHIBIT,  
20 WHICH IS EXHIBIT NUMBER SIX.

21 TO EXPLAIN TO THE COURT, PURSUANT TO THE PRIOR  
22 INDICATION TO THE COURT WE DEPOSED DR. OTTO BENDHEIM ON JULY  
23 11, 1990 AT TEN O'CLOCK IN THE MORNING. ACTUALLY WENT TILL  
24 NOON WITH THE UNDERSTANDING THAT I WOULD BE INTRODUCING THE  
25 TAPE OR THE VIDEOTAPE OF THAT TESTIMONY.

SUPERIOR COURT

1 THE COURT: YOU WANT ME TO VIEW IT AT A  
2 LATER TIME?

3 MR. STERLING: I HAVE NO OBJECTION IF THE  
4 COURT WANTS TO VIEW IT AT A LATER TIME.

5 THE COURT: DO WE STILL HAVE THAT MACHINE  
6 AROUND HERE? WE'LL HAVE TO GET A MACHINE ANY WAY.

7 MR. STERLING: THE FINAL THING, YOUR  
8 HONOR, IF I COULD, IN SUPPORT OF MR. BENDHEIM'S TESTIMONY,  
9 IS I WISH TO OFFER IN SEVERAL THINGS, IF I COULD. AND  
10 COUNSEL CAN CORRECT ME IF I'M WRONG. WHILE WE HAVE  
11 DR. BENDHEIM ON TAPE YOU WILL HEAR HIM REFERRING TO THREE  
12 DIFFERENT DOCUMENTS. BECAUSE OF A -- THIS WAS MY FIRST  
13 EXPERIENCE WITH A VIDEOTAPE DEPOSITION AND APPARENTLY THE  
14 ARRANGEMENTS, THE PEOPLE THAT WE MADE THE ARRANGEMENTS  
15 THROUGH FOR THE VIDEOTAPE DID NOT SHOW UP WITH THE COURT  
16 REPORTER. I ASSUMED THEY HAD. THEY COULD NOT MARK  
17 EXHIBITS, IN OTHER WORDS. BUT I WOULD INTRODUCE AS EXHIBITS  
18 SEVEN, EIGHT, NINE, WHICH ARE IN REVERSE ORDER, THE EXHIBITS  
19 WHICH WERE GIVEN TO DR. BENDHEIM UPON WHICH TO BASE HIS  
20 OPINION AND CONCLUSION. THOSE ARE THE DOCUMENTS WHICH WE  
21 REFER TO IN THE DEPOSITION.

22 THE COURT: THESE EXHIBITS TO THIS  
23 HEARING?

24 MR. STERLING: THEY WERE EXHIBITS TO HIS  
25 DEPOSITION AND TO THIS HEARING.

1 THE COURT: SEVEN, EIGHT AND NINE. MR.

2 AHLER?

3 MR. AHLER: NO OBJECTION.

4 THE COURT: SEVEN EIGHT AND NINE ARE

5 RECEIVED.

6 (THEREUPON, EXHIBITS 7 THROUGH 9 WERE

7 RECEIVED INTO EVIDENCE.)

8 MR. STERLING: THEY ARE OFFERED FOR THAT

9 PURPOSE.

10 THE COURT: SIX IS ALSO RECEIVED. ANY

11 OBJECTION?

12 MR. AHLER: NO.

13 (THEREUPON, EXHIBIT 6 WAS RECEIVED INTO

14 EVIDENCE.)

15 MR. STERLING: ALL RIGHT, YOUR HONOR.

16 THE NEXT THING IF I COULD, YOUR HONOR, AT THIS TIME THE

17 DEFENDANT -- I HAVE TO DO AN EXPLANATION ON HERE IF I COULD,

18 I WOULD LIKE SOME ACCESS TO THE RECORD AT THIS POINT. ON

19 THE ORIGINAL APPEAL AND AT THE ORIGINAL TRIAL, BOTH PAULINE

20 RODRIGUEZ AND A OYODELIA UDILA, I CANNOT PRONOUNCE THE NAME

21 O Y O D E L I A AND U D I L A. THEY WERE CALLED AS

22 WITNESSES FOR THE STATE. ON CROSS-EXAMINATION BOTH

23 WITNESSES TESTIFIED AS TO THE DEFENDANT'S BEING INTOXICATED

24 ON THE NIGHT IN THE INCIDENT. NIGHT OF THE INCIDENT.

25 THEY DID SO, HOWEVER, ONLY IN PASSING. I HAVE

1       ATTEMPTED IN APPROXIMATELY SIX WEEKS THROUGH THE COURT  
2       APPOINTED INVESTIGATOR -- I HAVE NO DOUBT IN MY MIND FROM  
3       HIS REPORTS THAT HE HAS TURNED OVER EVERY STONE THAT CAN BE  
4       TURNED OVER AND IN AN ATTEMPT TO LOCATE THESE TWO LADIES, AS  
5       WELL AS THEIR SISTER, CECELIA. I HAVE, IN FACT, EVEN  
6       ENLISTED THE ASSISTANCE OF THE COUNTY ATTORNEY'S OFFICE IN  
7       LOCATING THESE LADIES, AND THE ONLY ADDRESS THEY CAN PROVIDE  
8       ME AND THE ONLY ADDRESS WE CAN COME UP WITH IS AN ADDRESS  
9       THAT IS THREE YEARS OLD AS OF 1987.

10               BECAUSE I CANNOT LOCATE THESE WITNESSES, I  
11       WOULD ASK THE COURT TO ACCEPT EXHIBITS 10 AND 11, WHICH ARE  
12       IN FACT TRANSCRIPTIONS -- 10, 11 AND 12, -- I WILL AVOW TO  
13       THE COURT THAT EXHIBIT NUMBER 12 IS A TAPE RECORDING WHICH I  
14       RECEIVED FROM JOEL BROWN OF THE MARICOPA COUNTY PUBLIC  
15       DEFENDER'S OFFICE UPON THIS MATTER BEING REMANDED TO THE  
16       TRIAL COURT.

17               AT THAT TIME HE REPRESENTED TO ME THAT THIS WAS  
18       HIS ORIGINAL TAPE OF AN INTERVIEW OF BOTH YOLIDIA AND  
19       PAULINE RODRIGUEZ TAKEN BY HIM AND PAUL AHLER DURING THE  
20       ORIGINAL INVESTIGATION OF THIS CASE. EXHIBITS 10 AND 11 ARE  
21       IN FACT TRANSCRIPTS OF THE RESPECTIVE TAPES. AND I WOULD  
22       SUBMIT THOSE TO THE COURT AND ASK THAT THEY BE ACCEPTED IN  
23       EVIDENCE AS PART OF THE RECORD IN LIEU OF THE TESTIMONY OF  
24       THESE WITNESSES WHO I CANNOT OBTAIN.

25               THE COURT: MR. AHLER?

SUPERIOR COURT

1 MR. AHLER: JUDGE, I HAVEN'T HAD A CHANCE  
2 TO COMPARE THE TRANSCRIPT THAT HE HAD PREPARED AGAINST THE  
3 TAPE ITSELF.

4 THE COURT: THE TAPE?

5 MR. AHLER: AND UNTIL I DO THAT I'M  
6 SOMEWHAT RELUCTANT TO AGREE TO THEIR ADMISSION.

7 THE COURT: ALL RIGHT.

8 MR. STERLING: YOUR HONOR, THE  
9 TRANSCRIPTS ARE SUBMITTED AS AN AID TO THE COURT. WE ALL  
10 KNOW THE LAW IN ARIZONA IS THAT THE TRANSCRIPT NEVER STANDS  
11 IN PLACE OF THE TAPE. IT IS SUBMITTED SOLELY AS AN AID AND  
12 THAT IS HOW THEY ARE SUBMITTED TO YOU.

13 THE COURT: DO YOU WANT THE OPPORTUNITY  
14 TO COMPARE THE TWO?

15 MR. AHLER: I WOULD ALSO LIKE THE  
16 OPPORTUNITY JUST TO COMPARE HIS TAPE AGAINST MY TAPE.

17 MR. STERLING: I HAVE NO OBJECTION, YOUR  
18 HONOR, IF THEY WANT TO SUBMIT THEIR TAPE.

19 THE COURT: ALL RIGHT. PERMIT THE  
20 RELEASE OF 10, 11 AND 12 TO MR. AHLER. WHEN CAN YOU GET  
21 THEM BACK TO ME?

22 MR. AHLER: HOW ABOUT MONDAY?

23 THE COURT: THAT WILL BE FINE.

24 MR. AHLER: OR TUESDAY.

25 THE COURT: TUESDAY.

1 MR. STERLING: TWO OTHER MATTERS, YOUR  
2 HONOR, I WOULD PRESENT TO THE COURT AT THIS POINT. ONE IS I  
3 HAVE WITNESS PROBLEMS. I DID ANTICIPATE CALLING ANOTHER  
4 LIVE WITNESS TODAY BY THE NAME OF RICK BAILEY WHO IS A  
5 SUPERVISOR OF CLASSIFICATION DIVISION IN MARICOPA COUNTY  
6 SHERIFF'S OFFICE.

7 IN CONTACT WITH HIS OFFICE TWICE TODAY I HAVE  
8 BEEN INFORMED THAT APPARENTLY THE SUBPOENA WHICH I HAD  
9 ISSUED AND SERVED UPON THE SHERIFF'S DEPARTMENT DID NOT  
10 REACH HIM AND HIS SUPERVISOR HAS ATTEMPTED TO REACH HIM AT  
11 HOME TO ARRANGE FOR HIS PRESENCE AT THIS HEARING. HE HAS  
12 BEEN UNSUCCESSFUL IN DOING SO. SO AT THIS POINT IN TIME I  
13 PUT THAT ON THE RECORD SO THE COURT WOULD KNOW. I COULD  
14 MAKE AN OFFER OF PROOF IF THE COURT WANTS TO HEAR IT BECAUSE  
15 I DO NOT BELIEVE THERE IS A GREAT DEAL OF DISPUTE WITH WHAT  
16 THAT WITNESS WOULD TESTIFY TO.

17 MR. BAILEY WOULD TESTIFY THAT HE IS IN  
18 CLASSIFICATION AT THE MARICOPA COUNTY SHERIFF'S DEPARTMENT;  
19 AS SUCH HE IS AND ASSUMES PERSONAL -- I DON'T WANT TO SAY  
20 RESPONSIBILITY -- THAT'S THE WRONG TERM -- HE WORKS IN  
21 CONJUNCTION WITH MAXIMUM SECURITY INMATES TRANSFERRED BACK  
22 FROM DOC; THAT IN SUCH CAPACITY HE BECAME FAMILIAR WITH  
23 SAMUEL LOPEZ UPON HIS TRANSFER BACK HERE PURSUANT TO THE  
24 MANDATE OF THE SUPREME COURT FOR RESENTENCING; THAT HE HAS  
25 OVER THE LAST FOUR AND A HALF MONTHS, I BELIEVE, UNDER THE

SUPERIOR COURT

1 CIRCUMSTANCES, WORKED WITH SAMUEL LOPEZ; FOUND HIM TO BE A  
2 MODEL PRISONER AND PRESENTS NO PROBLEMS WHATEVER WITHIN A  
3 STRUCTURED ENVIRONMENT OF INCARCERATION. ON THAT WE  
4 WOULD -- THAT IS MY OFFER OF PROOF AS TO MR. BAILEY'S  
5 TESTIMONY.

6 THE COURT: DO YOU ACCEPT THE OFFER,  
7 MR. AHLER?

8 MR. AHLER: NO. I HAVEN'T TALKED TO  
9 MR. BAILEY. I WILL NOT ACCEPT THAT.

10 THE COURT: ALL RIGHT. WOULD YOU DO THAT  
11 AND THEN ADVISE ME AS TO WHETHER YOU ACCEPT IT OR NOT?

12 MR. AHLER: YES.

13 MR. STERLING: IF NOT, THEN MAYBE WE CAN  
14 BRING HIM IN LATER. THE LAST THING, YOUR HONOR, I BELIEVE,  
15 DO YOU WANT TO -- ON THAT OFFER OF PROOF DO YOU WANT TO  
16 OFFER THE DOC RECORDS? BECAUSE WE HAD KIND OF TALKED ABOUT  
17 THIS, YOUR HONOR, WHEN I WAS GOING TO GO CALL MR. BAILEY  
18 THEY WERE GOING TO OFFER DOC RECORDS IN EXCHANGE. I'M JUST  
19 TRYING TO KEEP THIS IN SOME SORT OF ORDER. BECAUSE I'LL  
20 OFFER THEM IF YOU WANT.

21 THE COURT: WILL THAT BE 13?

22 MR. AHLER: 14.

23 THE COURT: WHAT WAS 13?

24 MR. AHLER: 13 IS THE NEWSPAPER ARTICLE  
25 THAT I'M GOING TO GET TO.

SUPERIOR COURT

1 MR. STERLING: I ASSUME THOSE CAN BE  
2 SHOWN BY STIPULATION OR?

3 THE COURT: 14 IS WHAT DOC RECORDS?

4 MR. AHLER: YOUR HONOR, EXHIBIT 14 IS  
5 MR. LOPEZ'S COMPLETE DEPARTMENT OF CORRECTIONS RECORDS FOR  
6 ALL THREE INCARCERATIONS HE'S HAD DURING HIS LIFETIME. AND  
7 I BELIEVE MR. STERLING HERE WOULD HAVE AGREED TO THEIR  
8 ADMISSION.

9 MR. STERLING: YEAH, YOUR HONOR, THAT IS  
10 CORRECT. THAT IS MY UNDERSTANDING, STATE WOULD OFFER THEM.  
11 WE HAVE NO OBJECTION.

12 THE COURT: NO OBJECTION TO 14 THEN?

13 MR. AHLER: THAT'S CORRECT.

14 MR. STERLING: THAT'S CORRECT.

15 THE COURT: 14 IS RECEIVED.

16 (THEREUPON, EXHIBIT 14 WAS RECEIVED INTO  
17 EVIDENCE.)

18 MR. STERLING: YOUR HONOR, THE LAST  
19 DOCUMENT I WOULD THEREFORE SUBMIT TO THE COURT IS AN EXHIBIT  
20 NUMBER 13, WHICH I WOULD REQUEST TO BE MADE PART OF THE  
21 RECORD. BASICALLY IT IS A PHOTOSTATIC COPY OF THE  
22 WASHINGTON POST NATIONAL WEEKLY OF A EDITORIAL PAGE COMMENT  
23 ON THE WASHINGTON POST NATIONAL WEEKLY EDITION OF MAY 24,  
24 1988 CONCERNING THE COST OF DEATH PENALTY LITIGATION AND THE  
25 TEXT STUDY IN 1987.

SUPERIOR COURT



1 MR. AHLER: JUDGE, I OBJECT TO THIS. I  
2 THINK IT'S TOTALLY IRRELEVANT AND I UNDERSTAND THAT THE RULE  
3 SAYS THAT THE TECHNICAL RULES OF EVIDENCE OR THE RULES OF  
4 EVIDENCE DON'T APPLY, BUT I STILL THINK THE COURT HAS TO  
5 LOOK TO THE ISSUES OF RELEVANCY AND RELIABILITY WHEN  
6 ADMITTING EVIDENCE. AND IN THIS CASE THIS IS TOTALLY  
7 IRRELEVANT TO YOUR CONSIDERATION.

8 THE COURT: WELL, I WOULD HAVE TO AGREE,  
9 BUT I'M NOT GOING TO TAKE A CHANCE OF SOMEBODY GOING TO  
10 THINK IT IS. OBJECTION IS OVERRULED. 13 IS RECEIVED.

11 (THEREUPON, EXHIBIT 13 WAS RECEIVED INTO  
12 EVIDENCE.)

13 MR. STERLING: ALL RIGHT. YOUR HONOR, ON  
14 THAT BASIS THE DEFENDANT WOULD REST AS TO THE EVIDENTIARY  
15 PORTION AS TO BOTH AGGRAVATING FACTORS AND MITIGATING  
16 FACTORS.

17 THE COURT: MR. AHLER, YOU HAVE ANYTHING  
18 TO PRESENT?

19 MR. AHLER: I HAVE ONE WITNESS TO PRESENT  
20 IN REBUTTAL, SPECIFICALLY MR. DEAN WILL TESTIFY IN REBUTTAL  
21 TO THE VIDEOTAPE DEPOSITION THAT DR. BENDHEIM GAVE.

22 MR. STERLING: YOUR HONOR, THEN IN LIGHT  
23 THAT THE STATE IS ONLY GOING TO CHOOSE TO CHALLENGE THE  
24 MITIGATION EVIDENCE, I WOULD RENEW MY DIRECTED VERDICT  
25 MOTION AS TO THE ALLEGATION OF ESPECIALLY CRUEL, HEINOUS AND

1 DEPRAVED UNDER 703 BASED UPON EVIDENCE PRESENTED.

2 THE COURT: WELL, MAYBE I DON'T  
3 UNDERSTAND YOU, MR. STERLING. BUT I PRESIDED OVER THIS  
4 TRIAL. I HEARD THE EVIDENCE. I PREPARED A SPECIAL VERDICT.  
5 SUPREME COURT HAS, AT LEAST UP TILL NOW, APPROVED MY  
6 FINDINGS, AS FAR AS HEINOUS, CRUEL OR DEPRAVED IS CONCERNED.  
7 SO I DON'T UNDERSTAND -- I GUESS I DON'T UNDERSTAND YOUR  
8 MOTION FOR DIRECTED VERDICT. THESE STATUTES ARE IN THE  
9 SENTENCING PORTION. THEY ARE FOR JUDGES, NOT JURIES, TO  
10 UTILIZE AND APPLY. IN ANY EVENT, I'M GOING TO AGAIN DENY  
11 YOUR MOTION FOR DIRECTED VERDICT.

12 MR. STERLING: YOUR HONOR, RATHER THAN  
13 DELAY THE EXPERT WITNESS THING, COULD I RESERVE MY ARGUMENT  
14 AND TOUCH THIS AGAIN IN FINAL ARGUMENT?

15 THE COURT: SURE. YOU WANT TO GET RID OF  
16 THESE MOTIONS BEFORE WE HEAR THE WITNESS OR DO YOU WANT ME  
17 TO HEAR THE WITNESS? I FIND IT A LITTLE AWKWARD TO HEAR  
18 REBUTTAL WITNESSES WHEN I HAVEN'T HEARD THE DEFENDANT'S  
19 WITNESS.

20 MR. AHLER: WELL, THAT'S ON THE TAPE. IF  
21 THE COURT FEELS IT NECESSARY TO REVIEW DR. BENDHEIM'S TAPE  
22 FIRST, THEN I GUESS I COULD ASK MR. DEAN TO COME BACK AGAIN.  
23 THAT'S UP TO THE COURT. BUT WE'RE READY TO PROCEED AND I  
24 THOUGHT IT WOULD BE HELPFUL TO SAVE SOME TIME.

25 THE COURT: WELL, ALL RIGHT. GO AHEAD,

SUPERIOR COURT

1 IN THE INTEREST OF SAVING TIME.

2 MR. AHLER: DOES THE COURT WANT TO HEAR  
3 THE MOTIONS FIRST?

4 THE COURT: IF I UNDERSTOOD MR. STERLING,  
5 ONE OR TWO OF THEM HAVE BEEN RENDERED SOMEWHAT MOOT.

6 MR. AHLER: THAT'S CORRECT. I ONLY  
7 RECEIVED TWO MOTIONS, DEFENDANT'S PRESENTENCE MEMORANDUM  
8 CHALLENGING 13-703 (F)(6) AND ALSO HIS REQUEST FOR A JURY  
9 DETERMINATION AS TO THAT SAME ALLEGATION.

10 THE COURT: IT WAS REQUEST FOR JURY  
11 SENTENCING AND I BELIEVE YOU RESPONDED TO BOTH IN ONE  
12 REQUEST.

13 MR. AHLER: YES. I DON'T HAVE THE THIRD  
14 MOTION THAT YOU REFER TO.

15 THE COURT: THE THIRD ONE -- THE FIRST  
16 ONE NOW IS JURY DETERMINATION OF PROSECUTION'S ALLEGATION OF  
17 ESPECIALLY CRUEL, HEINOUS AND DEPRAVED. THE SECOND ONE IS  
18 DEFENDANT'S REQUEST FOR JURY SENTENCING. THE THIRD ONE IS  
19 DEFENDANT'S PRESENTENCE MEMORANDA CHALLENGING A.R.S. SECTION  
20 13-703 (F)(6) AS VAGUE AND OVER BROAD IN VIOLATION OF THE  
21 EIGHTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES  
22 CONSTITUTION. DATED -- IT'S FILED JUNE 19. YOU HAVE A  
23 RESPONSE TO IT. WHICH YOU CITE WALTON VERSUS ARIZONA.

24 MR. AHLER: I APOLOGIZE, I WAS MISTAKEN.

25 THE COURT: WHICH ONE OF THESE YOU WANT

1 TO ARGUE FURTHER, MR. STERLING?

2 MR. STERLING: YOUR HONOR, AS TO THE  
3 REQUEST FOR JURY SENTENCING OF THE DEATH PENALTY, AS TO THE  
4 ONE FOR JURY DETERMINATION OF THE FACTUAL BASIS OF 703  
5 (F)(6), I FIND MYSELF, IN LIGHT OF STATE VERSUS WALTON'S  
6 OPINION, THE MAJORITY OPINION IN THAT, UNABLE TO ARGUE THOSE  
7 TWO MOTIONS FURTHER OTHER THAN TO REMIND THE COURT THAT  
8 WALTON AND THE SUBSEQUENT CASES WERE A FIVE FOUR DECISION.

9 THE COURT: I'M AWARE OF THAT.

10 MR. STERLING: AND ADAMSON WAS A FOUR  
11 THREE DECISION. BUT --

12 THE COURT: OUT OF THE NINTH CIRCUIT.

13 MR. STERLING: NO, YOUR HONOR, MY  
14 UNDERSTANDING --

15 THE COURT: IS THIS A DIFFERENT ADAMSON?

16 MR. STERLING: MY UNDERSTANDING IS THAT  
17 TWO DAYS AFTER WALTON CAME DOWN, THE UNITED STATES SUPREME  
18 COURT AFFIRMED THE SENTENCING IN ADAMSON WHICH WAS A  
19 REJECTION OF THE DEATH PENALTY AND SENTENCE TO LIFE BY A  
20 FOUR VOTE TO THREE. O'CONNOR --

21 THE COURT: I UNDERSTOOD THEY DENIED  
22 CERTIORARI.

23 MR. STERLING: MY UNDERSTANDING IS -- AND  
24 I HAVEN'T BEEN ABLE TO CONFIRM IT, BUT MY UNDERSTANDING IS  
25 RENQUIST AND O'CONNOR HAD TO RECUSE THEMSELVES ON ADAMSON'S

1 CASE, LEAVING THE VOTE FOUR THREE JUST LIKE IN WALTON, BUT  
2 JUST BY THE COUNT.

3 THE COURT: THERE WASN'T ANY VOTE. MY  
4 UNDERSTANDING IS THEY DENIED CERTIORARI ON THE BASIS THAT  
5 THEY DIDN'T HAVE ENOUGH JUDGES.

6 MR. STERLING: AS TO MY TWO MOTIONS WHICH  
7 RELY BASICALLY UPON ADAMSON, I THINK ARIZONA VERSUS -- NO,  
8 ARIZONA VERSUS WALTON HAS BASICALLY TAKEN CARE OF THOSE.

9 THE COURT: MOTION FOR JURY DETERMINATION  
10 AS TO PROSECUTOR'S ALLEGATION OF 13-707(F)(6), ESPECIALLY  
11 CRUEL, HEINOUS AND DEPRAVED, DEFENDANT'S REQUEST FOR JURY  
12 SENTENCING ARE DENIED.

13 DOESN'T THE WALTON CASE ALSO DISPOSE OF, AT  
14 LEAST FOR THE PRESENT, THE POSITION TAKEN IN YOUR OTHER  
15 MOTION OR MEMORANDUM CHALLENGING 13-706(F)(6)?

16 MR. STERLING: NOT REALLY, YOUR HONOR. I  
17 WOULD ASK THE COURT TO RESERVE THAT TO THE END.

18 THE COURT: VERY WELL.

19 CALL YOUR WITNESS, PLEASE.

20 MR. AHLER: ROBERT DEAN.

21

22

23

24

25

(NEXT PAGE, PLEASE.)

SUPERIOR COURT

1 ROBERT T. DEAN, JR,  
2 CALLED AS A WITNESS HEREIN, HAVING BEEN FIRST DULY SWORN,  
3 WAS EXAMINED AND TESTIFIED AS FOLLOWS:  
4

5 EXAMINATION

6 BY MR. AHLER:

7 Q. WOULD YOU TELL US YOUR NAME, PLEASE?

8 A. ROBERT T. DEAN, JR.

9 Q. YOUR OCCUPATION?

10 A. I'M A PSYCHIATRIST.

11 Q. AND YOU'RE A MEDICAL DOCTOR?

12 A. YES.

13 Q. HOW LONG HAVE YOU BEEN PRACTICING MEDICINE AND  
14 PSYCHIATRY?

15 A. I HAVE BEEN PRACTICING MEDICINE SINCE 1956. I  
16 WAS LICENSED IN THE STATE OF ARIZONA AT THAT TIME. I HAVE  
17 BEEN PRACTICING PSYCHIATRY SINCE 1961.

18 Q. CAN YOU GIVE US YOUR EDUCATIONAL BACKGROUND,  
19 PLEASE?

20 A. I GRADUATED PHOENIX COLLEGE IN 1948. GRADUATED  
21 ARIZONA STATE COLLEGE WITH A DEGREE IN PSYCHOLOGY,  
22 BACHELOR'S DEGREE IN 1951. GRADUATED MEDICAL SCHOOL FROM  
23 THE UNIVERSITY OF BUFFALO IN BUFFALO, NEW YORK IN 1955. I  
24 HAVE SERVED MY GENERAL INTERNSHIP IN MEDICINE AT GOOD  
25 SAMARITAN HOSPITAL IN PHOENIX, ARIZONA, '55 TO '56.

SUPERIOR COURT

1 I WAS IN GENERAL PRACTICE OF MEDICINE, '56 TO  
2 '61. '61 TO '64 I TOOK POST-DOCTORIAL RESIDENCY TRAINING IN  
3 PSYCHIATRY AT THE UNIVERSITY OF COLORADO MEDICAL CENTER IN  
4 DENVER. IN 1964 I RETURNED TO PHOENIX AND ENTERED A GENERAL  
5 PRACTICE OF ADULT PSYCHIATRY. I MOVED MY OFFICE TO CAVE  
6 CREEK, ARIZONA ABOUT SIX YEARS AGO.

7 Q. HAVE YOU BEEN PRACTICING IN THE FIELD OF  
8 PSYCHIATRY IN THE PHOENIX AREA SINCE APPROXIMATELY 1965?

9 A. '64, YES.

10 Q. HAVE YOU TESTIFIED AS AN EXPERT WITNESS IN THE  
11 SUPERIOR COURT OF THE STATE OF ARIZONA CONCERNING ISSUES  
12 INVOLVING FORENSIC PSYCHIATRY?

13 A. YES.

14 Q. APPROXIMATELY HOW MANY TIMES?

15 A. IT WOULD BE IN THE HUNDREDS.

16 Q. DURING THE COURSE OF YOUR STUDIES IN THE FIELDS  
17 OF MEDICINE AND PSYCHIATRY AND ALSO YOUR PRACTICE AS A  
18 PSYCHIATRIST, HAVE YOU HAD ANY SPECIFIC OR SPECIAL INTERESTS  
19 IN THE AREA OF ALCOHOLISM?

20 A. YES.

21 Q. COULD YOU TELL US ABOUT THAT, PLEASE?

22 A. I DEVELOPED A SPECIAL INTEREST IN PROBLEMS  
23 HAVING TO DO WITH ALCOHOL AND ALCOHOLISM. EARLY ON IN MY  
24 MEDICAL CAREER, PROBABLY BEGINNING ABOUT 1957, I WAS VERY  
25 ACTIVE IN THAT AREA. I WAS A CO-FOUNDER OF THE MARICOPA

1 COUNSEL ON ALCOHOLISM, WHICH IS NOW KNOWN AS THE NATIONAL  
2 COUNSEL ON ALCOHOLISM, GREATER PHOENIX AREA. I WAS A  
3 CO-FOUNDER OF THE MEN'S CENTER CALLED THE CROSSROADS AT 18TH  
4 STREET AND OCOTILLO, WHICH IS A CENTER FOR HELPING ALCOHOLIC  
5 MEN REHABILITATE. I DELIVERED MANY PRESENTATIONS TO  
6 INDUSTRIAL PROGRAMS ON THE SUBJECT OF ALCOHOLISM. I SPOKE  
7 AT THE UNIVERSITY OF ARIZONA ON THAT SUBJECT.

8 I WAS THE FOUNDER OF THE MARICOPA COUNTY  
9 MEDICAL SOCIETY COMMITTEE ON ALCOHOLISM AND THE FIRST  
10 CHAIRMAN AND SERVED AS CHAIRMAN UNTIL I LEFT GENERAL  
11 PRACTICE TO GO INTO PSYCHIATRY AND ON RETURN TO PHOENIX I  
12 SERVED ON THAT COMMITTEE AGAIN.

13 AS A RESULT OF MY SERVING ON THAT COMMITTEE AND  
14 MY INTEREST IN THE SUBJECT, I WAS A MEMBER OF A STUDY GROUP  
15 THAT AT THAT TIME RESULTED IN THE FOUNDING OF WHAT WAS  
16 CALLED CODAC AND IS NOW CALLED CODAMA. I WORKED WITH THE  
17 SEVEN ORIGINAL YOUNG PEOPLE WHO FOUNDED THE CONTACT RESOURCE  
18 CENTER IN PHOENIX FOR PEOPLE WITH DRUG AND ALCOHOL AND  
19 MENTAL PROBLEMS NOW KNOWN AND AS TERROS. I HAVE TREATED AND  
20 WORKED WITH LITERALLY HUNDREDS OF ALCOHOLICS.

21 Q. DR. DEAN, DURING THE COURSE OF YOUR STUDY AND  
22 EXPERIENCE IN THE AREA OF PSYCHIATRY, HAVE YOU BECOME  
23 FAMILIAR WITH A CONDITION KNOWN AS PATHOLOGICAL  
24 INTOXICATION?

25 A. YES.



1 Q. COULD YOU EXPLAIN TO THE COURT WHAT THAT IS?

2 MR. STERLING: YOUR HONOR, COULD I  
3 INTERRUPT AND REQUEST SOME VOIR DIRE AS TO, PRIOR TO THIS  
4 WITNESS TESTIFYING AS AN EXPERT, PSYCHIATRIC EXPERT?

5 THE COURT: YOU MAY.

6  
7 VOIR DIRE EXAMINATION

8 BY MR. STERLING:

9  
10 Q. MR. DEAN, YOU HAVE JUST TOLD US ABOUT YOUR  
11 BACKGROUND. AM I CORRECT IN UNDERSTANDING THAT YOU ARE NOT  
12 BOARD CERTIFIED IN PSYCHIATRY?

13 A. THAT'S CORRECT.

14 Q. ARE YOU A MEMBER OF THE AMERICAN BOARD OF  
15 PSYCHIATRY AND NEUROLOGY?

16 A. NO.

17 Q. ARE YOU A MEMBER OR RECOGNIZED BY THE AMERICAN  
18 BOARD OF FORENSIC PSYCHIATRY?

19 A. NO.

20 Q. MY UNDERSTANDING FROM TALKING TO THE BUREAU OF  
21 MEDICAL EXAMINERS OF ARIZONA IS THAT THEY ISSUE A LICENSE TO  
22 PRACTICE MEDICINE AND THEY MAKE NO DIFFERENTIATION AS TO  
23 WHAT YOU DO WITH IT, WITHIN THE AREA OF MEDICINE, IS THAT  
24 CORRECT?

25 A. ONE IS ISSUED A LICENSE TO PRACTICE MEDICINE,

1 YES.

2 Q. PERIOD?

3 A. PERIOD.

4 Q. YOU ARE NOT BOARD CERTIFIED IN PSYCHIATRY; YOU  
5 ARE NOT A MEMBER OF ANY OF THE NATIONALLY RECOGNIZED  
6 PSYCHIATRIC OR FORENSIC PSYCHIATRIC ORGANIZATIONS; AM I  
7 CORRECT?

8 A. NO.

9 Q. I AM NOT CORRECT?

10 A. YOU'RE NOT CORRECT.

11 Q. WHAT MEMBERSHIP DO YOU HAVE IN A NATIONALLY  
12 RECOGNIZED ORGANIZATION OF FORENSIC PSYCHIATRY?

13 A. EXCUSE ME, I'M NOT SURE WHETHER I'M A MEMBER OF  
14 THE MEN ACADEMY OF FORENSIC PSYCHIATRY OR NOT BUT AT ONE  
15 TIME I WAS.

16 Q. OKAY. YOU ARE FAMILIAR WITH DR. BENDHEIM, ARE  
17 YOU NOT?

18 A. YES.

19 Q. HE IS BOARD CERTIFIED PSYCHIATRY, IS HE NOT?

20 A. I BELIEVE SO.

21 Q. IN FACT YOU KNOW WHAT A DIPLOMATE IS, DON'T  
22 YOU?

23 A. OF --

24 Q. OF THE AMERICAN BOARD OF PSYCHIATRY AND  
25 NEUROLOGY?

1 A. YES.

2 MR. AHLER: YOUR HONOR, I AM GOING TO  
3 OBJECT. THIS IS CROSS-EXAMINATION. IT'S NOT --

4 THE COURT: SOUNDS LIKE IT.

5 MR. STERLING: I'LL WITHDRAW THAT  
6 QUESTION, YOUR HONOR. I HAVE FURTHER QUESTIONS, THOUGH, IF  
7 I COULD?

8 MR. AHLER: COULD YOU SAVE IT FOR  
9 CROSS-EXAMINATION AND COULD I CONTINUE WITH MY DIRECT?

10 MR. STERLING: THEY GO TO THE WITNESS'S  
11 QUALIFICATION, YOUR HONOR.

12 THE COURT: LIMIT YOURSELF TO THE  
13 WITNESS'S QUALIFICATIONS, PLEASE.

14 Q. BY MR. STERLING: DOCTOR, YOU HAVE ALSO JUST --  
15 YOU HAVE JUST GIVEN US A LIST OF ACTIVITIES YOU HAVE HAD  
16 WITH, IN DEALING WITH ALCOHOLISM, AM I CORRECT?

17 A. YES.

18 Q. WOULD YOU AGREE WITH ME THAT PSYCHIATRICALY  
19 THERE IS A DISTINCTION BETWEEN AN ALCOHOLIC, A DISEASED  
20 ALCOHOLIC AND THE INDIVIDUAL OR, I CAN'T THINK OF THE NICE  
21 WORD, INDIVIDUAL PSYCHIATRIC REACTION TO ALCOHOL WHICH IS  
22 CALLED PATHOLOGICAL ALCOHOLISM OR INTOXICATION?

23 A. YES.

24 THE COURT: WHAT DOES THIS HAVE TO DO  
25 WITH HIS QUALIFICATIONS, MR. STERLING?

1 MR. STERLING: YOUR HONOR IT'S AN  
2 ACTIVITY FIELD. HE'S TESTIFIED AS TO HIS EXPERIENCE WITH  
3 ALCOHOLICS. AS YOU WILL UNDERSTAND WHEN YOU DEAL WITH DR.  
4 BENDHEIM'S TEST, HERE WE ARE NOT OFFERING A DEFENSE OF  
5 DIMINISHED CAPACITY ON ALCOHOLISM, WE ARE OFFERING  
6 DIMINISHED CAPACITY DEFENSE UPON PATHOLOGICAL INTOXICATION,  
7 WHICH IS THE AMOUNT OF ALCOHOL IMBIDED IS IRRELEVANT TO THE  
8 REACTION. IT'S A TRIGGER DEVICE.

9 THE DOCTOR HAS JUST ACKNOWLEDGED THAT THOSE ARE  
10 SEPARATE AREAS, AND I WOULD LIKE TO FIND OUT IF HE HAS ANY  
11 EXPERIENCE BEFORE HE'S ASKED TO COMMENT OR OFFER AN OPINION  
12 DEALING WITH PATHOLOGICAL INTOXICATION BECAUSE I DO BELIEVE  
13 THAT'S WHY THE STATE CALLED HIM.

14 THE COURT: LET'S GET TO THE QUESTION  
15 THEN, PLEASE.

16 Q. BY MR. STERLING: THOSE ARE DIFFERENT AREAS OF  
17 PSYCHIATRY, AM I CORRECT, OR THEY ARE DIFFERENT TREATMENTS?

18 A. WHAT?

19 Q. THE DIFFERENCE BETWEEN AN ALCOHOLIC OR AN  
20 ALCOHOLISM AND PATHOLOGICAL INTOXICATION?

21 A. THOSE ARE DIFFERENT.

22 Q. WHAT EXPERIENCE DO YOU HAVE EITHER IN WRITING,  
23 PUBLISHING, TREATING OR DEALING WITH PEOPLE ON PATHOLOGICAL  
24 INTOXICATION?

25 A. WHEN I TOOK MY PSYCHIATRIC RESIDENCY TRAINING,

1 THIS WAS A PART OF THE CURRICULUM THAT WAS PRESENTED.

2 Q. THAT WAS BACK IN 1961 THROUGH '64?

3 A. YES. INCORPORATED INTO THE GENERAL CURRICULUM  
4 OF PSYCHIATRY, AT THAT TIME THERE WAS A PATIENT ADMITTED TO  
5 THE HOSPITAL AT COLORADO PSYCHOPATHIC HOSPITAL IN DENVER  
6 THAT WAS PRESUMED TO HAVE HAD THIS CONDITION SO THAT WE GOT  
7 SOME EXTRA TRAINING ON THE SUBJECT.

8 Q. IS THAT THE EXTENT OF YOUR PERSONAL  
9 PROFESSIONAL EXPERIENCE WITH PATHOLOGICAL INTOXICATION?

10 A. I HAVE READ CONSIDERABLE ABOUT IT.

11 Q. THE FINAL AREA, DOCTOR, THAT I HAVE A QUESTION  
12 FOR YOU IN, MY UNDERSTANDING IS THAT YOU HAVE NOT EVEN  
13 INTERVIEWED OR HAD ANY PERSONAL CONTACT WITH THE DEFENDANT  
14 IN THIS ACTION, AM I CORRECT?

15 A. THAT'S CORRECT.

16 Q. IS IT ALSO MY UNDERSTANDING THAT YOU INTEND TO  
17 OFFER A DIAGNOSIS TO THIS COURT?

18 A. I INTEND TO ANSWER THE QUESTIONS THAT ARE ASKED  
19 OF ME.

20 MR. STERLING: YOUR HONOR, I WOULD ENTER  
21 AN OBJECTION BOTH AS TO QUALIFICATIONS AND AS TO BASIS ANY  
22 EXPERT OPINION OFFERED BY THIS WITNESS IN THIS AREA DEALING  
23 RESTRICTIVELY WITH PATHOLOGICAL INTOXICATION.

24 THE COURT: HAS THE WITNESS VIEWED THE  
25 TAPE OF DR. BENDHEIM?

1 MR. AHLER: YES, HE HAS.

2 THE COURT: IS THAT WHAT YOU'RE GOING TO

3 ASK HIM ABOUT?

4 MR. AHLER: PART OF IT. HE'S ALSO  
5 REVIEWED THE SAME DOCUMENTATION THAT WAS SUBMITTED TO DR.  
6 BENDHEIM. HE'S ALSO REVIEWED DR. BENDHEIM'S REPORT.

7 THE COURT: OBJECTION IS OVERRULED.

8  
9 DIRECT EXAMINATION (CONTINUED)

10 BY MR. AHLER:

11  
12 Q. MR. DEAN, COULD YOU DESCRIBE TO THE COURT THIS  
13 CONDITION THAT'S BEEN REFERRED TO AS PATHOLOGICAL  
14 INTOXICATION?

15 A. YES. THIS IS A VERY UNCOMMON CONDITION. IT IS  
16 CHARACTERIZED BY SUDDEN UNPREDICTABLE BEHAVIOR ON THE PART  
17 OF A PERSON WHO IS SUSCEPTIBLE TO SMALL QUANTITIES OF  
18 ALCOHOL WHEN INGESTED WHICH PRECIPITATE A RESPONSE OF THE  
19 MANIFESTATIONS OF PANIC, ANXIETY, RAGE, DEPRESSION, THAT  
20 WILL RESULT AT TIMES IN THE INDIVIDUAL BEING VERY VIOLENT  
21 WITH A PARTIAL OR COMPLETE LOSS OF CONSCIOUSNESS OR  
22 AWARENESS, BEHAVING IN ERRATIC UNPREDICTABLE PATTERN, OFTEN  
23 TIMES UNCONTROLABLY SO.

24 THIS MAY LAST FOR A FEW MINUTES, A FEW HOURS, A  
25 DAY OR EVEN MORE THAN A DAY. IT USUALLY TERMINATES WITH THE

1 INDIVIDUAL GOING INTO A DEEP SLEEP FROM WHICH THEY ARE  
2 DIFFICULT TO AROUSE AND AFTER THEY DO AROUSE FROM THE SLEEP  
3 THEY USUALLY HAVE AMNESIA FOR THE EVENTS THAT TOOK PLACE.

4 Q. YOU INDICATED THAT THIS CONDITION WAS UNCOMMON.

5 A. YES.

6 Q. IN THE 25 YEARS PLUS THAT YOU HAVE PRACTICED  
7 PSYCHIATRY IN THE PHOENIX AREA, HOW MANY CASES OF  
8 PATHOLOGICAL INTOXICATION ARE YOU AWARE OF?

9 A. NONE.

10 Q. WOULD A PERSON WHO IS SUFFERING FROM SUCH A  
11 CONDITION, PATHOLOGICAL INTOXICATION, WOULD THEY REACT TO  
12 ALCOHOL IN SUCH A MANNER AS YOU HAVE DESCRIBED ON EVERY  
13 INSTANCE IN WHICH THEY PARTAKE OF THE SUBSTANCE?

14 A. PRESUMABLY SO. OF COURSE THIS HAS NEVER BEEN  
15 TESTED. BUT THE CLINICAL DATA INDICATES THAT GIVEN THAT THE  
16 SUBJECT RECEIVES AN ADEQUATE QUANTITY -- AND IT'S A VERY  
17 SMALL QUANTITY OF ALCOHOL -- THEY WILL HAVE THIS KIND OF A  
18 PATHOLOGICAL INTOXICATION REACTION EACH TIME.

19 Q. AND WOULD THE AMOUNT OF ALCOHOL BE ENOUGH TO  
20 CAUSE A NORMAL PERSON, AN ORDINARY PERSON TO BECOME  
21 INTOXICATED?

22 A. NO.

23 Q. ARE THERE ANY PREDISPOSING FACTORS THAT WOULD  
24 PERHAPS CONDITION AN INDIVIDUAL WHO MIGHT SUFFER FROM SUCH A  
25 CONDITION AS PATHOLOGICAL INTOXICATION?

1           A. I AM NOT SURE WHAT YOU MEAN BY CONDITION AN  
2 INDIVIDUAL. THERE ARE PREDISPOSING CONDITIONS THAT MAY HAVE  
3 TO DO WITH THE TRIGGERING OF THIS KIND OF RESPONSE.

4           Q. COULD YOU TELL US WHAT THOSE PREDISPOSING  
5 FACTORS ARE?

6           A. YES. ONE OF THE FOREMOST IS BELIEVED THAT THE  
7 ALCOHOL IN THESE PEOPLE IN SOME WAY OR ANOTHER TRIGGERS AN  
8 EPILEPTIC KIND OF SEIZURE ATTACK, MEANING THAT THAT PERSON  
9 HAS SOME KIND OF ORGANIC PATHOLOGY IN THE BRAIN,  
10 PREDISPOSING THEM TO HAVING EPILEPTIC SEIZURES.

11           OTHER KINDS OF ORGANIC PATHOLOGY HAVING TO DO  
12 WITH THE BRAIN HAVE BEEN INCRIMINATED OR THOUGHT TO BE  
13 ASSOCIATED WITH THIS RESPONSE HAVE TO DO WITH TRAUMA WITH  
14 DISEASED STATES, LIKE ENCEPHALITIS, FROM WHICH THE  
15 INDIVIDUAL HAS RECOVERED; ANY CONDITION THAT MIGHT BE  
16 RELATED TO INFECTION OF THE CENTRAL NERVOUS SYSTEM AND THE  
17 BRAIN THAT THE INDIVIDUAL HAS RECOVERED FROM; SEVERAL  
18 VASCULAR ACCIDENTS, LIKE STROKES, THAT A PERSON MAY HAVE HAD  
19 AND HAS RECOVERED FROM; GENERAL DEGENERATIVE DISEASES OF THE  
20 BRAIN THAT ARE USUALLY ASSOCIATED WITH CHRONIC TOXIC  
21 SUBSTANCE ABSORPTION, LIKE LONG-CONTINUED USE OF ALCOHOL  
22 WHERE THERE'S BEEN DAMAGE TO THE BRAIN FROM INADEQUATE  
23 VITAMIN INTAKE, IN VITAMIN ABSORPTION WHICH CAUSES THE  
24 DAMAGE TO THE BRAIN; DEGENERATIVE CONDITIONS FOR WHICH WE DO  
25 NOT KNOW THE CAUSES, LIKE ALZHEIMER'S OR OTHER DEGENERATIVE



1 CONDITIONS OF ADVANCING YEARS.

2 IN ESSENCE, MOST ANY CONDITION THAT CAN CAUSE  
3 BRAIN DAMAGE MIGHT BE ASSOCIATED WITH THIS PHENOMENA.

4 Q. WOULD THE PERSON WHO SUFFERS FROM THIS,  
5 PATHOLOGY AT INTOXICATION, BE AWARE OF THEIR CONDITION?

6 A. USUALLY THEY HAVE SOME DEGREE OF AWARENESS,  
7 BECAUSE THE CONDITION OCCURS REGULARLY EVERY TIME THEY  
8 CONSUME RELATIVELY VERY SMALL AMOUNTS OF ALCOHOL. EVEN  
9 THOUGH THEY HAVE AN AMNESIA FOR WHAT TOOK PLACE DURING THEIR  
10 RESPONSE, GENERALLY SPEAKING THERE WILL BE OTHER PEOPLE WHO  
11 HAD BEEN PRESENT AT THE TIME OF THIS ERRATIC RESPONSE WHO  
12 INFORM THE SUBJECT THAT MAN, WHEN YOU DRINK, YOU REALLY DO  
13 CRAZY THINGS.

14 AND THEY TELL THEM ABOUT WHAT TOOK PLACE OR  
15 THEY SHOW THEM WHAT TOOK PLACE. SO THAT THE SUBJECT, WHEN  
16 THIS HAS BEEN EXPLAINED TO THEM ADEQUATELY, MAYBE ON  
17 REPEATED OCCASIONS, WILL COME TO REALIZE THAT WHEN THEY DO  
18 DRINK, EVEN SMALL AMOUNTS OF ALCOHOL, LIKE FOR EXAMPLE ONE  
19 JIGGER OF LIQUOR, THEY HAVE AN UNTOWARD REACTION, AN  
20 ACTIVITY REACTION FROM A NORMAL PERSON.

21 THEY ALSO MAY BECOME AWARE OF HAVING AN  
22 ACTIVITY RESPONSE IF THE -- IF THEIR REACTION WAS OVER  
23 SEVERAL HOURS OR SAY A DAY OR MORE. THEN BECAUSE THEY  
24 ARE -- THEY CAN RECALL WHAT THE LAST MEMORY WAS AND THEN  
25 RECALL WHAT THEIR NEXT MEMORY IS AND THESE CAN BE SEPARATED

1 NOT ONLY IN TIME, BUT MAYBE IN PLACE OR CIRCUMSTANCE SO THAT  
2 THEY REALIZE THAT THERE'S A BLANK SPACE THERE THAT THEY  
3 CANNOT EXPLAIN.

4 OTHERWISE IT'S VERY DIFFICULT, IF NOT  
5 IMPOSSIBLE, FOR SOMEBODY WHO HAS HAD AN AMNESIA TO REALIZE  
6 THAT THEY HAVE HAD AMNESIA.

7 Q. WHEN A PERSON WHO SUFFERS FROM THIS CONDITION  
8 -- AND HE'S IN THE THROES OF ONE OF THESE EPISODES, WOULD  
9 THEY BE ABLE TO RATIONALIZE AND CONDUCT THEMSELVES IN ANY  
10 TYPE OF RATIONAL BEHAVIOR?

11 A. AS FAR AS I KNOW THIS, TOO, HAS NEVER BEEN  
12 TESTED. BUT FROM THE DESCRIPTION OF THE BEHAVIOR, PEOPLE IN  
13 THESE CONDITIONS, THE ANSWER TO THAT IS PROBABLY NOT.

14 Q. MR. DEAN, WERE YOU ASKED TO REVIEW SOME  
15 DOCUMENTATION IN CONNECTION WITH A CRIMINAL CASE, STATE OF  
16 ARIZONA VERSUS SAMUEL LOPEZ?

17 A. YES.

18 Q. AND COULD YOU TELL US WHAT MATERIALS WERE  
19 PROVIDED TO YOU IN CONNECTION WITH THIS CASE.

20 A. I WAS PROVIDED WITH THE REPORT OF DR. OTTO  
21 BENDHEIM DATED JUNE 8, 1987; A PROBATIONARY REPORT ON CAUSE  
22 CR163419, THE OFFENSE DATE WAS OCTOBER 29, 1986, WRITTEN AND  
23 SIGNED BY DAVID WILCOX ON APRIL 12, 1990; PHOENIX POLICE  
24 DEPARTMENT REPORT IDENTIFIED AS 86-144475, DATED 10-29-86; A  
25 PRESENTENCE INVESTIGATION REPORT BY ROBERT SHERCOS

1 (PHONETIC) DATED 5-20-87; PROBATION OFFICER REPORT ON CAUSE  
2 151615. THE OFFENSE DATE WAS AUGUST 24, 1985, SIGNED BY NEAL  
3 NICOLA (PHONETIC), DATED 11-13-85; A PROBATION OFFICER  
4 REPORT ON CAUSE 121406, ON CHARGE OF BURGLARY, DATED  
5 7-12-81, TO WHICH THE DEFENDANT ENTERED A PLEA OF GUILTY,  
6 THAT WAS SIGNED BY AN ARMAND TEHERMAN (PHONETIC) DATED  
7 10-21-81; PHOENIX POLICE DEPARTMENT REPORT IDENTIFIED AS  
8 86-147145, ON A CHARGE OF SEXUAL ASSAULT AGAINST THE VICTIM  
9 CECILIA RODRIGUEZ. IN ADDITION I HAVE REVIEWED VIDEO TAPE  
10 REFERRED TO JUST A FEW MOMENTS AGO OF THE DEPOSITION OF DR.  
11 OTTO BENDHEIM.

12 Q. AND THAT WOULD BE EXHIBIT NUMBER 6?

13 A. YES.

14 Q. LET ME ALSO SHOW YOU EXHIBIT 7 THAT WAS  
15 PREVIOUSLY INTRODUCED BY THE DEFENSE. IS THIS ONE OF THE  
16 DOCUMENTS THAT YOU REVIEWED IN CONNECTION WITH THIS CASE?

17 A. YES.

18 Q. AND FOR THE RECORD WHAT IS EXHIBIT NUMBER 7?

19 A. THAT'S THE PHOENIX POLICE DEPARTMENT REPORT  
20 IDENTIFIED AS 86-147145, CHARGE OF SEXUAL ASSAULT INVOLVING  
21 THE VICTIM, CECILIA RODRIGUEZ.

22 Q. WHAT WAS THE DATE OF THAT REPORT AND OF THAT  
23 INCIDENT?

24 A. NOVEMBER 3, 1986, IS THE DATE AND TIME OF THE  
25 REPORT. THE DATE OF THE INCIDENT WAS 11-3-85.

1 Q. WOULD THAT BE 11-3-86?

2 A. EXCUSE ME, IT SAYS '85 HERE.

3 MR. STERLING: YOUR HONOR, WE WILL  
4 STIPULATE IT WAS '86.

5 MR. AHLER: THAT'S INCORRECT. IT'S '86.

6 THE COURT: ALL RIGHT.

7 Q. BY MR. AHLER: SHOW YOU AN ITEM THAT WAS  
8 PREVIOUSLY MARKED, IDENTIFIED AND INTRODUCED BY THE DEFENSE  
9 AS EXHIBIT NUMBER 8 AND ASK YOU IF THIS IS ONE OF THE  
10 DOCUMENTS THAT YOU REVIEWED IN CONNECTION WITH THIS CASE.

11 A. YES.

12 Q. AND COULD YOU IDENTIFY THAT, PLEASE?

13 A. THAT'S AN ADULT PROBATION DEPARTMENT REPORT ON  
14 CAUSE 151615, OFFENSE DATE AUGUST 24, 1985, SIGNED BY NEAL  
15 NICHOLA, DATED 11-13-85.

16 Q. SHOW YOU EXHIBIT 9, ASK YOU TO IDENTIFY THAT IF  
17 YOU CAN AND TELL US IF YOU ALSO REVIEWED THAT EXHIBIT.

18 A. YES. THAT'S THE PSYCHIATRIC REPORT OF OTTO L.  
19 BENDHEIM M.D. EXAMINATION DATED JUNE 8, 1987, DICTATED JUNE  
20 11, 1987.

21 Q. MR. DEAN, DR. BENDHEIM INDICATED DURING THE  
22 COURSE OF HIS DEPOSITION HE GAVE A TENTATIVE DIAGNOSIS OF  
23 PATHOLOGICAL INTOXICATION IN THE CASE OF SAMUEL LOPEZ. ARE  
24 YOU AWARE OF THAT?

25 A. YES.

1 Q. DO YOU AGREE WITH THAT TENTATIVE DIAGNOSIS?

2 MR. STERLING: YOUR HONOR, AGAIN, I AM  
3 GOING TO RENEW MY OBJECTION. I OBJECT TO THIS DOCTOR GIVING  
4 A DIAGNOSIS IN AN AREA HE IS NOT QUALIFIED IN, IN AN AREA HE  
5 HAS NOT DONE ANY WORK IN, AND FINALLY ON A PATIENT HE HAS  
6 NEVER SEEN DESPITE DEFENSE'S AGREEMENT TO IT.

7 THE COURT: DID YOU DO THE SAME THING  
8 WITH DR. KEENE? I'M GOING TO OVERRULE YOUR OBJECTION. IF  
9 ANYTHING, GOES TO THE WEIGHT RATHER THE ADMISSIBILITY.

10 Q. BY MR. AHLER: MR. DEAN, LET ME ASK YOU ONE  
11 OTHER QUESTION BEFORE THAT QUESTION.

12 FROM YOUR STANDPOINT OF REVIEWING THESE  
13 DOCUMENTS, IS IT NECESSARY FOR YOU TO SEE THE DEFENDANT IN  
14 PERSON?

15 A. NO, NOTHING COULD BE ADDED BY AN INTERVIEW WITH  
16 THE INDIVIDUAL.

17 Q. RELATIVE TO THIS DIAGNOSIS?

18 A. EXACTLY.

19 Q. DO YOU AGREE WITH DR. BENDHEIM'S ASSESSMENT  
20 THAT THIS DEFENDANT SUFFERS FROM -- TENTATIVELY SUFFERS FROM  
21 THIS CONDITION KNOWN AS PATHOLOGICAL INTOXICATION?

22 A. I DISAGREE.

23 Q. AND COULD YOU TELL US WHY?

24 A. THERE ARE SEVERAL REASONS, BUT I'D LIKE TO  
25 CONFINE MY COMMENTS TO THE POLICE DEPARTMENT REPORT OF THE

1 INCIDENT OF -- I THINK IT WAS NOVEMBER 3, 1986. THE SEXUAL  
2 ASSAULT, THE POLICE DEPARTMENT REPORT IDENTIFIED AS  
3 86-141745.

4 IN THAT REPORT THE VICTIM, CECILIA RODRIGUEZ,  
5 STATED THAT -- OR SHE'S QUOTED AS STATING THAT SHE AND FOUR  
6 OTHER PERSONS, INCLUDING SAMMY LOPEZ, HAD GONE TO THE HOME  
7 OF ONE PERSON IDENTIFIED AS POPS, WITH TWO 12 PACKS OF BEER,  
8 WHERE THEY HAD A SOCIAL TIME AND THOSE 24 CONTAINERS OF BEER  
9 WERE CONSUMED AND SHE WAS GOING TO A LOCAL CONVENIENCE STORE  
10 AND GET SOME MORE BEER AND AT THE TIME THAT SHE DEPARTED,  
11 MR. LOPEZ VOLUNTEERED TO GO ALONG WITH HER AND DID SO.

12 SHE DESCRIBED HOW, ON ALMOST REACHING THIS  
13 CONVENIENCE MARKET, THE DEFENDANT PHYSICALLY DRAGGED HER TO  
14 AN AUTOMOBILE AND SHE DESCRIBED A RAPE. SHE STATED -- THE  
15 OFFICER REPORTED THAT SHE STATED THAT THE DEFENDANT WAS  
16 DRUNK, INTOXICATED. THE POLICE OFFICER WHO MADE THE REPORT  
17 WHO HAD INTERROGATED MR. LOPEZ IN CONJUNCTION WITH THAT  
18 REPORT STATED THAT MR. LOPEZ HAD OBVIOUSLY BEEN DRINKING BUT  
19 HE WOULD NOT DESCRIBE HIM AS INTOXICATED.

20 NOW, GETTING BACK TO THE STATE OF PATHOLOGICAL  
21 INTOXICATION. AS I HAVE ALREADY TESTIFIED, THAT THESE  
22 PEOPLE HAVE THIS RESPONSE WITH EVERY INGESTION OF EVEN SMALL  
23 AMOUNTS OF ALCOHOL, SO THAT AS DESCRIBED IN THIS SPECIFIC  
24 POLICE REPORT, MR. LOPEZ HAD BEEN DRINKING AND PRESUMABLY  
25 ADEQUATE AMOUNTS TO PRECIPITATE A RESPONSE CONSISTENT WITH

SUPERIOR COURT.

1 PATHOLOGICAL INTOXICATION. YET THERE WAS NO SUCH RESPONSE  
2 AS DESCRIBED.

3 THERE ARE OTHER REASONS THAT I HAVE THAT I CAN  
4 GO INTO IF YOU LIKE.

5 Q. ARE THE FACTS IN THIS PARTICULAR CASE  
6 CONSISTENT WITH A PERSON WHO IS SUFFERING FROM A  
7 PATHOLOGICAL INTOXICATION?

8 A. THEY ARE NOT.

9 Q. WHAT ARE THEY CONSISTENT WITH?

10 A. THEY'RE CONSISTENT WITH SOMEBODY WHO HAS BEEN  
11 DRINKING, IS PROBABLY UNDER THE INFLUENCE OF ALCOHOL.

12 Q. NOW, DOES ALCOHOL INTOXICATION, FROM YOUR  
13 EXPERIENCE, CAUSE CERTAIN BEHAVIORAL CHANGES IN INDIVIDUALS?

14 A. YES.

15 Q. AND IS THE DISINHIBITION OF SEXUAL AGGRESSIVE  
16 IMPULSIONS ONE OF THOSE BEHAVIORAL CHANGES?

17 A. THAT'S ONE OF THEM, YES.

18 Q. DID YOU SEE ANY OTHER EVIDENCE IN ANY OF THE  
19 OTHER REPORTS SUBMITTED TO YOU THAT WERE CONSISTENT WITH AN  
20 INDIVIDUAL WHO WAS SUFFERING FROM PATHOLOGICAL INTOXICATION?

21 A. NO.

22 MR. AHLER: NO FURTHER QUESTIONS.

23 THE COURT: CROSS-EXAMINE.

24 THE WITNESS: WITH THE COURT'S  
25 PERMISSION, I'D LIKE TO STATE THAT I AM A PSYCHIATRIST. I'M

1 NOT BOARD CERTIFIED. I AM A MEMBER OF THE AMERICAN  
2 PSYCHIATRIC ASSOCIATION. I'M A MEMBER OF THE PHOENIX  
3 PSYCHIATRIC COUNSEL. I'M A MEMBER OF THE ARIZONA  
4 PSYCHIATRIC SOCIETY. I HAVE BEEN ACCEPTED AS A PSYCHIATRIST  
5 BY THESE ORGANIZATIONS. SIMPLY BECAUSE I DO NOT HAVE THE  
6 BOARDS IN PSYCHIATRY MAKES ME NO LESS OF A PSYCHIATRIST.

7 THE COURT: YOU ALSO HAVE A DEGREE IN  
8 PSYCHIATRY, IF I UNDERSTOOD YOU CORRECTLY.

9 THE WITNESS: I FINISHED TRAINING FOR  
10 PSYCHIATRIC QUALIFICATION IN 1964 AND WAS AWARDED A DIPLOMA  
11 FROM THE UNIVERSITY OF COLORADO IN -- COLORADO PSYCHOPATHIC  
12 HOSPITAL IN DENVER, YES.

13 THE COURT: CROSS-EXAMINE.

14

15

CROSS-EXAMINATION

16 BY MR. STERLING:

17

18 Q. YOU DO A LOT OF TESTIFYING, DO YOU NOT, IN  
19 COURTS?

20 A. I DON'T KNOW. WHAT IS A LOT.

21 Q. MORE THAN FOUR TIMES A YEAR?

22 A. YES.

23 Q. MY COUNT IS RIGHT, YOU HAVE BEEN DOING  
24 PSYCHIATRIC MEDICAL PRACTICE FOR 26 YEARS IN THIS LOCALITY?

25 A. SINCE 1964.

SUPERIOR COURT



1 Q. AND IT'S 1990. THAT MAKES 26 YEARS?

2 A. CORRECT.

3 Q. AND YOU HAVE NEVER EVER IN YOUR PROFESSION  
4 OBSERVED A SINGLE CASE OF PATHOLOGICAL INTOXICATION, IS THAT  
5 CORRECT?

6 A. THAT'S CORRECT.

7 Q. IF YOU HAVE NEVER SEEN ONE, MAY I SAFELY ASSUME  
8 THAT YOU HAVE NEVER TREATED ANYBODY OR DIAGNOSED ANYONE IN  
9 YOUR PRACTICE AS SUFFERING FROM PATHOLOGICAL INTOXICATION?

10 A. THAT'S CORRECT.

11 Q. BUT YOU DO ACKNOWLEDGE THAT IT EXISTS, DO YOU  
12 NOT?

13 A. OH, YES.

14 Q. IT'S IN THE DMSR III, IS IT NOT?

15 A. YES.

16 Q. IT IS RECOGNIZED BY EVERY PSYCHIATRIC  
17 ORGANIZATION AS A PROPER DIAGNOSIS, IS IT NOT, IN THE UNITED  
18 STATES AT LEAST?

19 A. I HAVE NO IDEA ABOUT THAT. I DON'T KNOW WHAT  
20 EVERY PSYCHIATRIC ORGANIZATION INCLUDES.

21 Q. WELL, YOU RECOGNIZE IT AS AN ILLNESS, DO YOU  
22 NOT?

23 A. YES.

24 Q. NOW, WHEN THE STATE HAD YOU ON DIRECT, I'D LIKE  
25 TO PLAY WITH THAT A MINUTE. YOU KEPT SAYING WELL, FROM MY

1 READING, I WOULD ASSUME, I WOULD -- I THINK I PRESUME. AND  
2 RIGHT AT THE END OF YOUR LAST THING YOU SAID IN REACHING  
3 YOUR OPINION -- NO, YOU DIDN'T FIND IT TO BE PSYCHOTIC  
4 INTOXICATION BECAUSE IT DOESN'T HAPPEN EVERY TIME AN  
5 INDIVIDUAL INGESTS ALCOHOL AND IMPLICIT IN YOUR FINDING WAS  
6 THAT THERE WAS NO INSTANTANEOUS OR IMMEDIATE REACTION, AM I  
7 CORRECT?

8 A. I DON'T BELIEVE I SAID THOSE THINGS.

9 Q. NO. I SAID IMPLIED.

10 LET ME ASK YOU A QUESTION. YOU DID TESTIFY  
11 THAT IN ORDER FOR YOU TO FIND PATHOLOGICAL INTOXICATION, YOU  
12 WOULD HAVE TO SEE IT DEMONSTRATED EVERY TIME THE PATIENT,  
13 THE PERSON INFLICTED WITH IT DRANK A CERTAIN AMOUNT OF  
14 ALCOHOL, HE WOULD HAVE TO HAVE A PSYCHOTIC REACTION, IS THAT  
15 CORRECT?

16 A. I DID NOT SAY HE WOULD HAVE TO HAVE A PSYCHOTIC  
17 REACTION.

18 Q. BUT YOU SAY EVERY TIME?

19 A. HE WOULD HAVE TO HAVE THE REACTION, THAT'S  
20 CHARACTERISTIC FOR HIM EACH AND EVERY TIME WHEN GIVEN  
21 SUFFICIENT QUANTITIES OF ALCOHOL, YES. THE CONDITION IS A  
22 METABOLIC ONE.

23 Q. WELL, MY QUESTION IS: DO YOU HAVE ANY  
24 AUTHORITY FOR THAT REQUIREMENT OF ABSOLUTE CONSISTENCY,  
25 ABSOLUTE UNFAILING EVERY TIME?

1 A. I CANNOT CITE A REFERENCE, NO.

2 Q. CORRECT ME IF I'M WRONG, BUT IF YOU HAVE  
3 WATCHED DR. BENDHEIM'S TAPE, ONE OF THE THINGS DR. BENDHEIM  
4 DISCUSSES, ISN'T IT, THAT IT CAN OCCUR PERIODICALLY? THE  
5 GUY CAN GET DRUNK LIKE JUST EVERY THREE OR FOUR TIMES AND ON  
6 THE FOURTH TIME HE CAN EXPLAIN --

7 A. I DISAGREE WITH DR. BENDHEIM.

8 Q. MY QUESTION IS: YOU REALIZE ON THE TAPE DR.  
9 BENDHEIM MAKES THAT STATEMENT AND THAT'S ONE OF HIS  
10 CHARACTERISTICS?

11 A. THAT MAY BE. I WASN'T THAT CLEAR FROM MY  
12 VIEWING OF THE TAPE.

13 Q. BUT YOU HAVE THIS REQUIREMENT OF EVERY  
14 INGESTION, EVERY SINGLE TIME, AM I CORRECT, AND THAT'S PART  
15 OF THE BASIS OF YOUR CONCLUSION THAT PATHOLOGICAL  
16 INTOXICATION CANNOT BE IN THIS CASE?

17 A. NO. I WOULD NOT GO SO FAR AS TO SAY THAT. IN  
18 THE EVENT THAT ONE WERE TO TEST THIS BY GIVING A PERSON A  
19 SPECIFIC QUANTITY OF ALCOHOL AND ONE TIME IT DID NOT OCCUR,  
20 CERTAINLY THAT WOULD NOT DISCOUNT IT.

21 Q. WELL, ISN'T THAT WHAT YOU'RE DOING WITH MR.  
22 AHLER WHEN YOU SAID ON THE CECILIA RODRIGUEZ RAPE CASE, THE  
23 FACT THAT HE WAS ABLE TO STAY 40 MINUTES AT POP'S HOUSE, ACT  
24 HIS NORMAL MILD MANNERED SELF AND THAT HE CHOSE NOT TO GRAB,  
25 MANHANDLE AND RAPE HIS OWN FRIEND FOR 40 MINUTES, THAT TOLD

1 YOU THAT THAT WAS NOT PATHOLOGICAL INTOXICATION, ISN'T THAT  
2 CORRECT?

3 A. THAT'S ONE SMALL FACTOR, YES.

4 Q. NOW, AM I CORRECT, ALSO, IT'S IMPLICIT IN YOUR  
5 STANDARD FOR PATHOLOGICAL INTOXICATION THAT IT BE AN  
6 IMMEDIATE ONSET?

7 A. USUALLY IT COMES ON, ACCORDING TO WHAT I HAVE  
8 READ AND UNDERSTAND AND HEARD AND LEARNED ABOUT IT, WITHIN  
9 MINUTES.

10 Q. IN OTHER WORDS, AN ALMOST IMMEDIATE ONSET.  
11 HAVE YOU EVER READ OF A CASE OR DO YOU HAVE ANY AUTHORITY  
12 THAT SAYS IT MUST DO THAT UNDER THE DMSR III DIAGNOSIS GUIDE  
13 IN ORDER TO DO THAT? HAVE YOU NOT EVER HEARD OF CASES WHERE  
14 IT'S DELAYED 40 MINUTES TO AN HOUR AND A HALF CONSISTENTLY?

15 A. NO.

16 Q. AND THAT'S PART OF YOUR DIAGNOSIS STANDARD,  
17 CORRECT, THAT IT BE ON AN IMMEDIATE REACTION?

18 A. THAT'S ONE OF THE FACTORS -- NO, NOT IMMEDIATE,  
19 WITHIN SEVERAL MINUTES.

20 Q. WHAT'S SEVERAL? AND I DON'T WANT TO PICK --

21 A. OH, I WOULD SAY WITHIN TEN.

22 Q. BUT THAT'S NOT SUPPORTED IN THE DMSR III AS ONE  
23 OF THE CRITERIA, IS IT?

24 A. I DON'T KNOW.

25 Q. NOW, YOU MENTIONED AND YOU WENT INTO QUITE SOME

1       FACTS ABOUT THE RODRIGUEZ RAPE CASE BY CASE, NUMBER AND  
2       EVERYTHING. THIS IS AN INCIDENT THAT OCCURRED SOME FOUR  
3       DAYS AFTER THIS MURDER, AM I CORRECT?

4               A. YES.

5               Q. YOU THINK IT PSYCHIATRICALY SIGNIFICANT TO YOU  
6       THAT, ONE, THE DEFENDANT HAD ONLY THREE TO FIVE BEERS BY  
7       ANYONE'S COUNT?

8               A. I WAS NOT AWARE OF ANY SPECIFIC NUMBER.

9               Q. DID YOU READ THE POLICE REPORTS FROM THE  
10      CECELIA RODRIGUEZ WHICH WE HAD MARKED, I BELIEVE, AS EXHIBIT  
11      NUMBER 4?

12              A. YES, I DID.

13              Q. DOES SHE NOT TELL THE OFFICERS HOW MANY BEERS  
14      THE DEFENDANT HAD WHEN HE ACCOMPANIED HER BACK TO POPS WITH  
15      THE FIRST BEER BUY?

16              A. I DON'T REMEMBER THAT SHE KNEW SPECIFICALLY. I  
17      REMEMBER THAT SHE SAID THAT HE WAS DRUNK. I DO REMEMBER  
18      THAT IT WAS SAID THAT TWO 12 PACKS WERE BOUGHT AND THERE  
19      WERE FIVE PEOPLE WHO CONSUMED 24 BOTTLES OR CANS. THAT  
20      MEANS THAT ON AVERAGE EACH ONE HAD FOUR AND FOUR-FIFTHS OF  
21      THE CAN.

22              Q. ASSUMING AN ABSOLUTE PARODY, DID YOU CONSIDER  
23      IT PSYCHIATRICALY SIGNIFICANT IN TERMING THAT EPISODE THAT  
24      THE DEFENDANT AND CECELIA RODRIGUEZ WERE, IN FACT,  
25      ACQUAINTED PRIOR TO THIS INCIDENT?

1 A. DID I CONSIDER WHAT?

2 Q. IT PSYCHIATRICALY SIGNIFICANT THAT THEY HAD  
3 BEEN ACQUAINTED?

4 A. NO, I DIDN'T CONSIDER THAT SIGNIFICANT.

5 Q. DID YOU CONSIDER IT PSYCHIATRICALY SIGNIFICANT  
6 THAT WITHIN FOUR WEEKS OF THIS BRUTAL, FORCED RAPE ON  
7 NOVEMBER 3, THAT CECELIA RODRIGUEZ AND THE DEFENDANT, BY HER  
8 OWN STATEMENTS, HAD CONSENSUALLY ENGAGED IN SEX?

9 A. I DON'T KNOW WHAT YOU MEAN BY PSYCHIATRICALY  
10 SIGNIFICANT. I DON'T SEE THAT THERE'S ANY CONNECTION  
11 BETWEEN WHAT THEY MAY HAVE DONE FOUR WEEKS PRIOR TO THAT  
12 INCIDENT AND WHAT THEY DID ON THE NIGHT IN QUESTION OF  
13 NOVEMBER 3 WITH RESPECT TO SEXUAL ACTIVITY.

14 Q. EVEN THOUGH ONE IS A FORCED PHYSICAL BRUTAL  
15 RAPE, AND THE OTHER ONE, WITHOUT ALCOHOL, WAS A CONSENSUAL,  
16 APPARENTLY LOVING SITUATION WHICH CECELIA RODRIGUEZ ENJOYED  
17 LESS THAN FOUR WEEKS BEFORE?

18 A. EXCUSE ME, I WAS INAPPROPRIATE. I'M SORRY.

19 Q. I DON'T THINK YOU WERE INAPPROPRIATE. I THINK  
20 IT'S VERY APPROPRIATE IN THIS CASE.

21 A. WELL, I WAS CHUCKLING BECAUSE I DON'T KNOW  
22 WHETHER SHE ENJOYED IT OR NOT. YOU KNOW, SOMETIMES I CAN'T  
23 EVEN TELL IF MY WIFE IS ENJOYING IT.

24 Q. THE RECORD BETTER REFLECT EVERYBODY CHUCKLED ON  
25 THAT ONE.

1 BUT DOCTOR, THAT'S WHAT SHE REPORTED TO THE  
2 POLICE OFFICER, THE INVESTIGATING OFFICER, WHEN HE'S ASKING  
3 HER ABOUT THE MAN THAT JUST BRUTALLY RAPED HER AND SHE'S  
4 IDENTIFYING HIM BY NAME.

5 A. AS I RECALL, SHE SAID IT WAS NORMAL. I DON'T  
6 RECALL THAT SHE SAID SHE ENJOYED IT. I'M SORRY, BUT I'M  
7 STILL CHUCKLING INAPPROPRIATELY.

8 Q. NOW, LET'S GO BACK ON -- THERE IS SUCH A THING  
9 AS PATHOLOGICAL INTOXICATION?

10 A. YES.

11 Q. LET ME ASK YOU A QUESTION. IF WE COULD DO IT,  
12 WE COULD RUN A GREAT EXPERIMENT IN THIS CASE, COULDN'T WE?  
13 WE COULD TAKE THAT MAN RIGHT THERE AND GIVE HIM ABOUT SIX  
14 BEERS AND SEE WHAT HE DOES, COULDN'T WE?

15 A. WE COULD.

16 Q. AND UNDER YOUR THEORY, IF THAT MAN THERE HAD A  
17 PSYCHOTIC REACTION AND GRABBED A PAIR OF SCISSORS AND  
18 STARTED STABBING AT SOMEBODY, WE'D HAVE YOUR FIRST CLINICAL  
19 CASE EVER OF PSYCHOTIC INTOXICATION, WOULDN'T WE?

20 A. NOT NECESSARILY.

21 Q. RIGHT. HE COULD BE FAKING IT, COULDN'T HE,  
22 RIGHT?

23 A. THERE ARE OTHER THINGS, TOO.

24 Q. WHAT ARE THE OTHER THINGS THAT WOULD CAUSE  
25 THAT?

1           A. WE MIGHT HAVE A GOOD REASON FOR TRYING TO  
2     ATTACK SOMEBODY. AND BECAUSE SOMEBODY ATTACKS SOMEBODY WITH  
3     WHATEVER KIND OF AN INSTRUMENT OR WEAPON DOES NOT CONSTITUTE  
4     THE NECESSARY BEHAVIOR TO CLASSIFY THAT WITHIN THE REALM OF  
5     PATHOLOGICAL INTOXICATION.

6           Q. PAUL AHLER GAVE YOU A BUNCH OF DOCUMENTS AND HE  
7     TOOK YOU THROUGH ONE BY ONE, OKAY, SIMILAR TO THE DOCUMENTS  
8     I GAVE OTTO BENDHEIM AND DR. KEENE. THOSE ARE THE STANDARD  
9     KIND OF DOCUMENTS YOU GET IN THESE CASES WHERE YOU'RE ASKED  
10    TO RENDER AN OPINION AS AN OUTSIDE EXPERT, AM I CORRECT?

11          A. YES.

12          Q. THOSE ARE THE NORMAL THINGS YOU RELY ON, AM I  
13    CORRECT?

14          A. YES.

15          Q. AND WHERE YOU'RE DEALING WITH PATHOLOGICAL  
16    INTOXICATION, YOU IN FACT RELY ON THOSE MORE THAN YOU RELY  
17    UPON TALKING TO THE DEFENDANT?

18          A. YES.

19          Q. BECAUSE THE DEFENDANT DOESN'T KNOW IF HE'S  
20    TRULY A PATHOLOGICAL INTOXICANT, HE HAS REAL AMNESIA, AM I  
21    CORRECT?

22          A. THAT'S CORRECT.

23          Q. SO HE'S LIABLE TO TELL YOU HE DOESN'T REMEMBER,  
24    HE'S LIABLE TO DENY THAT HE COMMITTED A CRIME NO MATTER HOW  
25    OVERWHELMING THE EVIDENCE, AM I CORRECT?



1 A. YES.

2 Q. AND IF THAT INDIVIDUAL WERE TO TELL YOU,  
3 DOCTOR, AND PLEASE ASSUME -- BECAUSE I KNOW YOU'RE  
4 INEXPERIENCED WITH THIS -- BUT ASSUME THAT FOR THE FIRST  
5 TIME IN 27 YEARS YOU MEET A PATIENT OF YOURS THAT YOU KNOW  
6 HAS PATHOLOGICAL INTOXICATION, OKAY, AND THAT MAN TELLS YOU  
7 HE HAS NO PROBLEM WITH ALCOHOL, HE NEVER DRINKS. ARE YOU  
8 GOING TO BELIEVE HIM?

9 A. EXCUSE ME, HE NEVER DRINKS?

10 Q. RIGHT.

11 A. YET HE HAS PATHOLOGICAL INTOXICATION? THOSE  
12 ARE -- THOSE CANNOT CO-EXIST.

13 Q. NO. IT CAN CO-EXIST THAT HE IS A PATHOLOGICAL  
14 INTOXICANT SUFFERER AND WOULDN'T THAT SAME INDIVIDUAL JUST  
15 LIKE EVERY OTHER ALCOHOLIC TELL YOU, I DON'T HAVE AN ALCOHOL  
16 PROBLEM, I MAY HAVE A COLD BUD ONCE EVERY MONTH?

17 A. I GUESS I DON'T UNDERSTAND WHAT YOU'RE ASKING.  
18 IF YOU MAINTAIN THE PERSON NEVER DRINKS, THEN WE DON'T KNOW.

19 Q. HE TELLS YOU HE DOESN'T DRINK. HE DENIES HE  
20 HAS NO ALCOHOL PROBLEM. IN FACT, HE TELLS YOU HE HAS A COLD  
21 BUD MAYBE ONCE EVERY THREE MONTHS.

22 IS THAT TO BE UNEXPECTED IN AN INDIVIDUAL WHO  
23 HAS COME TO KNOW, AS YOU TESTIFIED TO ADMIRABLY ON DIRECT,  
24 THAT YOU GET AN IDEA IF YOU'RE A PATHOLOGICAL INTOXICANT  
25 SUFFERER OVER THE YEARS, YOU KNOW THAT WHEN YOU DRINK YOU

1 CAUSE PROBLEMS? IS IT UNUSUAL, IS IT UNEXPECTED TO YOU, AS  
2 A PSYCHIATRIST, THAT THE INDIVIDUAL IS GOING TO LIE ABOUT  
3 HAVING AN ALCOHOL PROBLEM? IS HE GOING TO MINIMIZE HIS  
4 DRINKING OF INTOXICANTS?

5 A. WELL, WHEN YOU SAID A PATIENT, I ASSUMED YOU  
6 MEANT SOMEBODY COMING TO ME FOR TREATMENT IN MY OFFICE.  
7 NOW, IF THE QUESTION IS DO PEOPLE -- IS IT COMMON FOR  
8 PERSONS TO MINIMIZE AND DENY OR OUT AND OUT PREVARICATE  
9 ABOUT THE QUANTITY OF ALCOHOL OR THE REACTION THEY MIGHT  
10 HAVE TO ALCOHOL, THE ANSWER TO THAT IS YES, PEOPLE DO THAT.

11 Q. AND THAT IS A SYMPTOM SHARED BOTH BY ALCOHOLICS  
12 WHO WILL DRINK EVERYTHING AVAILABLE TO THEM AND THOSE WHO  
13 SUFFER FROM PATHOLOGICAL INTOXICATION EVEN THOUGH THEY DRINK  
14 VERY LITTLE IN QUANTITY. AM I CORRECT?

15 A. I'M NOT SURE WHAT YOUR QUESTION IS. ALCOHOLICS  
16 GENERALLY DON'T DRINK EVERYTHING AVAILABLE.

17 Q. BUT THEY WILL DENY THEY HAVE A PROBLEM WITH  
18 ALCOHOL?

19 A. THEY OFTEN DO THAT, YES.

20 Q. IS A PATHOLOGICAL -- PERSON WHO SUFFERS FROM  
21 PATHOLOGICAL INTOXICATION, DOES THAT ONLY OCCUR WITH  
22 ETHANOL, POTABLE ALCOHOL --

23 A. WELL, THAT'S AN INTERESTING QUESTION. YOU SEE,  
24 THE METHOD FOR TESTING WOULD BE TO GIVE PEOPLE THE  
25 INTOXICANT, THE TOXIN FOR THEM TO IN SOME WAY OR ANOTHER

1 HAVE INTRODUCED INTO THEIR BODY. NOW, IT IS TRUE THAT  
2 ALCOHOL HAS BEEN GIVEN TO PEOPLE WITH THIS CONDITION TO TEST  
3 FOR IT AND SEE THE RESPONSE. I DON'T KNOW OF ANYBODY WHO  
4 HAS DONE TESTING WITH OTHER KINDS OF TOXIC AGENTS LIKE GLUE,  
5 PAINT FUMES, GASOLINE, KEROSENE, SOME OF THE ILLICIT DRUGS  
6 OR --

7 Q. BUT EVEN THOUGH YOU HAVEN'T SEEN ANY OF THE  
8 DIAGNOSTIC TESTING OR TESTS WITH DIFFERENT PARAMATERS DONE  
9 ON THIS, YOU STRONGLY SUSPECT THAT THOSE TOXINS HAVE THEIR  
10 OWN DISCIPLES, THAT THEY WOULD, IN FACT, CAUSE SIMILAR  
11 REACTION?

12 A. I THINK THAT THE VAPORS, THE TOXIC VAPORS,  
13 LIKE --

14 Q. GLUE SNIFFERS?

15 A. GLUE SNIFFING, PAINT SNIFFING, I AM NOT SURE I  
16 REALLY CAN ADEQUATELY DESCRIBE WHAT FREE BASING IS. IT  
17 INVOLVES INHALING VAPORS.

18 Q. ALL RIGHT.

19 A. OTHER VAPORS LIKE ETHER OR INHALANT  
20 ANESTHETICS, NITRICOXIDE, I SUSPECT THAT THE RESPONSE WOULD  
21 BE VERY SIMILAR.

22 Q. NOW, IN THIS CASE YOU HAVE TESTIFIED YOU DO NOT  
23 NEED TO TALK TO THE DEFENDANT, YOU DO NOT NEED TO PERSONALLY  
24 ASSESS THE DEFENDANT TO REACH A DIAGNOSIS OF HE'S NOT  
25 SUFFERING FROM PATHOLOGICAL INTOXICATION, AM I CORRECT?

1 A. YES.

2 Q. DO YOU THINK YOU WOULD HAVE TO HAVE THAT KIND  
3 OF A PERSONAL ASSESSMENT IN ORDER TO REACH THE CONTRARY  
4 DIAGNOSIS?

5 A. TO MAKE THE POSITIVE DIAGNOSIS OF THE  
6 PATHOLOGICAL INTOXICATION, THAT ONE WOULD HAVE TO HAVE A  
7 PERSONAL RELATIONSHIP WITH THE SUBJECT INVOLVED?

8 Q. THAT'S MY QUESTION. WOULD YOU?

9 A. I DON'T THINK IT'S NECESSARY, NO.

10 Q. IN FACT, WOULD IT BE UNFAIR FOR THE DOCTOR TO  
11 DISCOUNT WHAT THE DEFENDANT TELLS HIM? IN OTHER WORDS, IS  
12 IT UNFAIR FOR DR. BENDHEIM TO BASE HIS WHOLE CONCLUSION AND  
13 HIS INITIAL, VERY TENTATIVE CONCLUSION IN 1987 AND SAY IT'S  
14 TENTATIVE BECAUSE THE DEFENDANT TELLS ME HE WASN'T DRINKING  
15 THAT NIGHT? IS THAT UNFAIR FOR HIM TO JUST TOTALLY  
16 DISREGARD THE DEFENDANT'S STATEMENT IN REACHING HIS  
17 DIAGNOSIS?

18 A. I DON'T THINK IT'S UNFAIR TO DISREGARD THE  
19 STATEMENT OF DENIAL OF CONSUMPTION OF ALCOHOL.

20 THE COURT: GOING TO BE MUCH LONGER, I  
21 THINK IT'S ABOUT TIME TO TAKE A RECESS.

22 MR. STERLING: TWO QUICK AREAS, YOUR  
23 HONOR.

24 THE COURT: I HAVE HEARD THAT BEFORE.

25 Q. BY MR. STERLING: YOU DO NOT CONSIDER ALL --

1 MAY I ASSUME THAT YOU HAVE READ ALL THESE DEPARTMENTAL  
2 REPORTS AND EVERYTHING, YOU HAVE READ ABOUT ALL THE POLICE  
3 TAKING STATEMENTS FROM INDIVIDUALS THAT SAY SAMMY IS A NICE,  
4 QUIET, SHY INDIVIDUAL WHO -- HE'S SOBER AND WHEN HE'S DRUNK  
5 HE'S TOTALLY DIFFERENT?

6 MR. AHLER: OBJECTION, FACTS NOT IN  
7 EVIDENCE.

8 Q. BY MR. STERLING: IF I WERE TO TELL YOU THAT  
9 THERE ARE REPEATED REFERENCES IN THE DEPARTMENTAL REPORTS TO  
10 INDIVIDUALS WHO DESCRIBE -- WE'RE TALKING ABOUT A FAIRLY  
11 ROUGH AREA OF THIS TOWN -- WHO WILL DESCRIBE SAMMY LOPEZ AS  
12 BEING AN ULTRA POLITE, SHY, RETIRING, QUIET INDIVIDUAL WHEN  
13 HE'S SOBER, BUT REALLY MEAN AND VIOLENT WHEN HE'S DRUNK, DO  
14 YOU THINK THAT FITS IN TO THE PROFILE OF SOMEBODY THAT  
15 SUFFERS FROM PSYCHOTIC INTOXICATION?

16 A. NOT NECESSARILY.

17 Q. EVEN IF THE CHANGE IS SO ABRUPTLY BIZARRE AS TO  
18 HAVE PEOPLE COMMENT ON HOW BIZARRE IT IS AND HOW ABSOLUTE  
19 FROM 180 DEGREES OUT?

20 A. IF YOU'RE -- YOU ASKED IF I READ THE REPORTS.

21 Q. YES.

22 A. I HAVE READ THE REPORTS.

23 Q. AND DID YOU GET THAT FROM THE REPORTS THAT A  
24 NUMBER OF THE NEIGHBORS IN THAT NEIGHBORHOOD ACQUAINTED WITH  
25 SAMMY LOPEZ DESCRIBED HIM AS SUCH?

1           A. I DID NOT GET THAT IMPRESSION THAT IT WAS 180  
2 DEGREE SUDDEN CHANGE.

3           Q. DID YOU READ ABOUT AN OFFICER'S -- AN OFFICER'S  
4 INTERVIEW AND QUESTIONING OF MR. HERNANDEZ, THE HUSBAND OF  
5 CECELIA RODRIGUEZ' SISTER, PAULINE?

6           A. YES.

7           Q. DO YOU REMEMBER WHAT HE SAID TO THE OFFICER?

8           A. HE SAID THERE WAS A CHANGE OF PERSONALITY.  
9 ORDINARILY HE'S A SHY, TIMID PERSON, AND WHEN HE DRINKS HE'S  
10 MEAN.

11          Q. WERE YOU GIVEN ANY OF THE TRANSCRIPT OF THE  
12 TRIAL?

13          A. NO.

14          Q. SO YOU DON'T KNOW WHAT PAULINE RODRIGUEZ  
15 TESTIFIED TO OR UDOLIA SABORY (PHONETIC) TESTIFIED TO AS TO  
16 HIS REACTION TO INTOXICANTS?

17          A. NO.

18          Q. WOULD YOU BE AS SOLID IN YOUR NONDIAGNOSIS IF I  
19 WERE TO HAVE YOU READ THOSE STATEMENTS, IF I WERE TO HAVE  
20 YOU READ FROM THE PEOPLE AROUND SAMMY LOPEZ THAT TESTIFIED  
21 THAT HE CHANGES WHEN HE DRINKS?

22          A. EXCUSE ME, WOULD I BE ASSAULTED?

23          Q. NO. WOULD YOU -- WOULD THAT AFFECT YOUR  
24 CONCLUSION OF NONDIAGNOSIS IF I --

25          A. I DON'T KNOW UNTIL I READ THE MATERIAL.

1 MR. STERLING: DO YOU WANT TO TAKE A  
2 BREAK, YOUR HONOR, AND I'LL FIND THEM DURING THE BREAK?

3 THE COURT: ALL RIGHT. WE'LL TAKE AN  
4 AFTERNOON RECESS. APPROXIMATELY 15 MINUTES.

5 (THE COURT STOOD IN RECESS.)

6 THE COURT: RECORD MAY REFLECT THE  
7 PRESENCE OF COUNSEL AND DEFENDANT. CONTINUE  
8 CROSS-EXAMINATION.

9 Q. BY MR. STERLING: DOCTOR, YOU HAD A CHANCE TO  
10 REVIEW EXHIBITS SEVEN AND EIGHT -- EXHIBITS 10 AND 11 WHICH  
11 ARE THE TRANSCRIPTIONS OF THE TAPE OF THE INTERVIEW OF  
12 PAULINE RODRIGUEZ AND UDOLIA SABORY. DO YOU AGREE WITH ME  
13 THAT THEY BOTH DESCRIBE THE SAME REACTION: WHEN SAMMY IS  
14 SOBER, HE'S NICE AND WHEN HE'S DRUNK, HE'S IRRATIONAL?

15 A. I AGREE. EXCUSE ME, I WON'T USE THE WORD  
16 IRRATIONAL. I DO NOT AGREE TO THE WORD IRRATIONAL.

17 Q. OKAY. THAT WHEN HE IS DRUNK HE'S MEAN. LET'S  
18 USE MR. HERNANDEZ.

19 A. YES.

20 Q. AND THAT IT IS A SUBSTANTIAL CHANGE IN  
21 PERSONALITY?

22 A. APPARENTLY, YES.

23 Q. WOULD THAT CHANGE YOUR DIAGNOSIS OR  
24 NONDIAGNOSIS IN THIS CASE?

25 A. IT WOULD NOT.

1 Q. DOCTOR, AM I CORRECT THAT THE BEST WAY -- OR  
2 DR. BENDHEIM SAYS THIS SEVERAL TIMES -- THE BEST WAY AND  
3 PRACTICALLY THE ONLY GUARANTEED WAY WITH NO ERROR FOR A  
4 DIAGNOSIS THAT THIS MURDER WAS CAUSED BY THE DEFENDANT WHILE  
5 IN A STATE OF PSYCHOTIC INTOXICATION -- PARDON ME -- WOULD  
6 HAVE BEEN FOR A WITNESS TO HAVE BEEN THERE, RIGHT?

7 A. DID DR. BENDHEIM STATE THAT?

8 Q. YEAH. HE SAYS THAT NO DIAGNOSIS -- I'M USING  
9 THE WORD PSYCHOTIC AND IT'S THE WRONG WORD --

10 MR. AHLER: I'M GOING TO OBJECT. I THINK  
11 IT'S A MISSTATEMENT OF THE FACTS.

12 Q. BY MR. STERLING: CORRECT ME IF I'M WRONG, BUT  
13 WHEN WE'RE TALKING ABOUT THE MURDER, DOCTOR, THE ONLY WAY  
14 ONE, A PSYCHIATRIST OR PSYCHOLOGIST OR MENTAL HEALTH EXPERT  
15 COULD HONESTLY SAY AS A FIRM DIAGNOSIS THAT THE MURDER WAS  
16 RELATED OR CAUSED BY THE DEFENDANT IN A STATE OF --

17 THE COURT: PATHOLOGICAL INTOXICATION.

18 Q. BY MR. STERLING: -- PATHOLOGICAL  
19 INTOXICATION -- THANK YOU, YOUR HONOR -- WOULD HAVE BEEN FOR  
20 SOMEBODY TO HAVE ACTUALLY BEEN WITH HIM THAT NIGHT, SEE HIM  
21 GO THROUGH THE CHANGE AND SEE THE REACTION, TO PERSONALLY  
22 WITNESS IT?

23 A. THE ONLY WAY THAT ONE COULD MAKE THAT DIAGNOSIS  
24 WOULD BE TO HAVE BEEN PRESENT?

25 Q. YES.



1 A. I DISAGREE.

2 Q. HOW ELSE COULD IT HAVE BEEN MADE -- COULD IT BE  
3 MADE WITH A DEGREE OF MEDICAL CERTAINTY?

4 A. I THINK WITH AN ADEQUATE HISTORY OF SIMILAR  
5 RESPONSES IN THE PAST, ONE COULD TEST THE SUBJECT BY GIVING  
6 THEM A DOSE OF ALCOHOL. OTHER DESCRIPTIONS OF THE SUBJECT'S  
7 BEHAVIOR WHILE UNDER THE INFLUENCE OF ALCOHOL WOULD EITHER  
8 CONFIRM OR NONCONFIRM THE DIAGNOSIS.

9 Q. YOU DID NOT -- DID YOU ATTACH ANY IMPORTANCE TO  
10 THE 1985 RESISTING ARREST WHILE THE REPORT ON THAT -- WHILE  
11 HE WAS INHALING THE PAINT FUMES?

12 A. DID I ATTACH ANY IMPORTANCE?

13 Q. YES.

14 A. I READ THE REPORT. DO YOU MEAN DO I THINK IT  
15 WOULD BE UNUSUAL FOR SOMEBODY TO RESIST ARREST WHO IS UNDER  
16 THE INFLUENCE OF THE TOXIC SUBSTANCES FROM PAINT?

17 Q. YES.

18 A. I DON'T THINK THAT'S UNUSUAL.

19 MR. STERLING: I HAVE NO FURTHER  
20 QUESTIONS.

21 THE COURT: REDIRECT.

22

23

24

25

SUPERIOR COURT

REDIRECT EXAMINATION

BY MR. AHLER:

Q. DOES THE FACT THAT AN INDIVIDUAL WHO NORMALLY WHEN THEY'RE NOT DRINKING IS SOMEWHAT MILD MANNERED AND THEN BECOMES AGGRESSIVE AFTER THEY HAVE BEEN DRINKING, DOES THAT INDICATE THAT THEY SUFFER FROM PATHOLOGICAL INTOXICATION?

A. DOES NOT.

Q. MR. STERLING ASKED YOU SOME QUESTIONS ABOUT THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, ALSO KNOWN AS DSM-III-R. ARE YOU FAMILIAR WITH THAT BOOK?

A. YES.

Q. IS THAT BOOK CONSIDERED AUTHORITATIVE IN THE AREA OF MENTAL HEALTH?

A. YES. MORE PRECISELY IT'S AUTHORITATIVE IN THE AREA OF MENTAL ILLNESS.

Q. IS THERE A SECTION IN THERE WHICH COVERS THE CONDITION KNOWN AS PATHOLOGICAL INTOXICATION?

A. YES.

Q. LET ME REFER YOU TO PAGE 128 OF THE DSM-III-R, WHICH -- AND THE SUBSECTION 291.40, AND ASK YOU TO TELL US WHAT THAT IS.

A. THAT'S CALLED ALCOHOL IDIOCRATIC INTOXICATION.

Q. IS THAT THE SAME THING AS PATHOLOGICAL

1 INTOXICATION?

2 A. YES.

3 Q. ARE THERE ANY -- IS THERE ANY INFORMATION  
4 CONTAINED IN THE DSM-III-R CONCERNING HOW LONG IT TAKES FOR  
5 THE ALCOHOL TO -- HOW LONG IT TAKES BEFORE THE ALCOHOL  
6 CAUSES THIS CONDITION?

7 A. YES.

8 Q. AND WHAT DOES THE DSM-III-R STATE ON THAT  
9 MATTER?

10 A. THE COURSE OF THE CONDITION, THE CHANGE IN  
11 BEHAVIOR BEGINS EITHER WHILE THE PERSON IS DRINKING OR  
12 SHORTLY THEREAFTER, PARENTHESIS, WITHIN MINUTES, PARENTHESIS  
13 CLOSED PERIOD.

14 Q. DOES THE DSM-III ALSO LIST A NUMBER OF  
15 PREDISPOSING FACTORS TO THIS CONDITION?

16 A. YES.

17 Q. AND CAN YOU RELATE WHAT THE DSM-III-R STATES ON  
18 THAT?

19 A. IT SAYS PREDISPOSING FACTORS, PERIOD. A FEW  
20 PEOPLE WITH THIS DISORDER HAVE BEEN REPORTED TO HAVE  
21 TEMPORAL LOBE SPIKES ON AN ELECTROENCEPHALOGRAM AFTER  
22 RECEIVING SMALL AMOUNTS OF ALCOHOL, PERIOD. ALTHOUGH THE  
23 REPORTS ARE ONLY ANECDOTAL, IT IS THOUGHT THAT PEOPLE WITH  
24 BRAIN DAMAGE LOSE, QUOTE, TOLERANCE, CLOSED QUOTE, FOR  
25 ALCOHOL AND BEHAVE ABNORMALLY AFTER DRINKING SMALL AMOUNTS.

1 THE TYPES OF BRAIN INJURY MOST OFTEN ASSOCIATED  
2 WITH THIS SYNDROME ARE FROM TRAUMA AND ENCEPHALITIS, PERIOD.  
3 THE LOSS OF TOLERANCE MAY BE TEMPORARY OR PERMANENT, PERIOD.  
4 IT IS ALSO REPORTED THAT PEOPLE WHO ARE UNUSUALLY FATIGUED  
5 OR HAVE A DEBILITATING PHYSICAL ILLNESS MAY HAVE A LOW  
6 TOLERANCE TO ALCOHOL AND RESPOND INAPPROPRIATELY TO SMALL  
7 AMOUNTS, PERIOD. IN ADDITION, ADVANCING AGE MAY BE  
8 ASSOCIATED WITH REDUCED TOLERANCE TO ALCOHOL, PERIOD.

9 Q. DID YOU FIND ANYTHING IN YOUR REVIEW OF THE  
10 RECORDS IN THIS CASE THAT WOULD -- THAT THIS DEFENDANT  
11 POSSESSES ANY OF THESE PREDISPOSING FACTORS?

12 A. NOTHING.

13 MR. AHLER: THANK YOU.

14 I HAVE NO FURTHER QUESTIONS.

15 THE COURT: THANK YOU, DOCTOR. YOU MAY  
16 STEP DOWN. WATCH YOUR STEP PLEASE.

17 ANYTHING FURTHER, MR. AHLER?

18 MR. AHLER: NO, YOUR HONOR.

19 THE COURT: MR. STERLING, I DON'T KNOW  
20 WHAT YOU WANT ME TO DO WITH THIS MEMORANDUM CHALLENGING  
21 THE --

22 MR. STERLING: IF I COULD, YOUR HONOR, I  
23 WOULD MOVE TO REOPEN, ORIGINALLY BECAUSE RICK BAILEY IS HERE  
24 AT THIS POINT IN TIME, AND RATHER THAN HAVE THE AVOWAL, I  
25 WOULD RATHER PUT HIM ON THE STAND.

SUPERIOR COURT

1 THE COURT: COME FORWARD AND GIVE YOUR  
2 NAME TO THE CLERK AND BE SWORN PLEASE, SIR.

3  
4 RICK BAILEY,  
5 CALLED AS A WITNESS HEREIN, HAVING BEEN FIRST DULY SWORN,  
6 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

7  
8 EXAMINATION

9 BY MR. STERLING:

10  
11 Q. GOOD AFTERNOON, SIR. WOULD YOU STATE YOUR NAME  
12 AND OCCUPATION FOR COURT AND COUNSEL?

13 A. YES. MY NAME IS RICHARD BAILEY, B-A-I-L-E-Y.  
14 I'M A CLASSIFICATION COUNSELOR WITH THE MARICOPA COUNTY  
15 SHERIFF'S OFFICE.

16 Q. AND IN YOUR -- HOW LONG HAVE YOU BEEN SO  
17 EMPLOYED?

18 A. APPROXIMATELY FIVE YEARS.

19 Q. AND DURING THAT EMPLOYMENT DID YOU HAVE  
20 OCCASION TO MEET AND BECOME ACQUAINTED WITH ONE SAMUEL LOPEZ  
21 SEATED IMMEDIATELY TO MY RIGHT?

22 A. YES, I HAVE.

23 Q. AND WHEN DID YOU MEET HIM AND BECOME ACQUAINTED  
24 WITH HIM?

25 A. I FIRST MET MR. LOPEZ IN APRIL OF THIS YEAR,

SUPERIOR COURT

1 FIRST WEEK OF APRIL.

2 Q. THAT WAS WHEN HE WAS TRANSFERRED BACK UP HERE  
3 FOR RESENTENCING?

4 A. THAT'S CORRECT.

5 Q. I WANT TO TRY TO SAVE SOME TIME. DURING THAT  
6 PERIOD OF TIME HAVE YOU HAD OCCASION TO SUPERVISE AND BE  
7 AWARE OF HIS CONDUCT WHILE WITHIN THE CONFINES AND THE  
8 CUSTODY OF MARICOPA COUNTY JAIL?

9 A. YES, I HAVE. I HAVE SEEN MR. LOPEZ ON A WEEKLY  
10 BASIS, ONCE A WEEK SINCE HIS INCARCERATION AT MCSO.

11 Q. AND DO YOU ALSO -- WOULD YOU BE AWARE OF ANY  
12 PROBLEMS OR ANYTHING ELSE HE HAD DURING THAT INCARCERATION  
13 OR ANY PROBLEMS THAT HE CAUSED?

14 A. YES, I WOULD.

15 Q. DURING THAT PERIOD OF TIME I HAVE PREVIOUSLY  
16 MADE AN AVOWAL TO THIS COURT THAT YOU WOULD TESTIFY THAT  
17 SAMUEL LOPEZ HAS BEEN A MODEL PRISONER WHILE WITHIN THE  
18 CUSTODY OF THE PEOPLE UNDER YOUR SUPERVISION. IS THAT A  
19 CORRECT STATEMENT OF OUR PREVIOUS CONVERSATION?

20 A. THAT IS CORRECT. TO MY BEST KNOWLEDGE,  
21 MR. LOPEZ HAD NO DISCIPLINARY ACTION SINCE HE'S BEEN IN OUR  
22 CUSTODY.

23 Q. IN FACT YOU WOULD TERM HIM AN EXEMPLARY  
24 PRISONER?

25 A. THAT'S CORRECT.

1 MR. STERLING: I HAVE NOTHING FURTHER.

2 THE COURT: CROSS-EXAMINE.

3  
4 CROSS-EXAMINATION

5 BY MR. AHLER:

6  
7 Q. MR. BAILEY?

8 A. THAT'S CORRECT.

9 Q. MR. BAILEY, IT'S MY UNDERSTANDING THAT YOU HAVE  
10 SEEN MR. LOPEZ ONCE A WEEK FOR APPROXIMATELY TEN MINUTES ON  
11 EACH VISIT, CORRECT?

12 A. APPROXIMATELY. SOMETIMES LESS, SOMETIMES MORE.

13 Q. AND THOSE VISITS NORMALLY INVOLVE YOU GOING UP  
14 TO WHERE HE'S BEING HOUSED, WHICH IS IN MAXIMUM CUSTODY,  
15 CORRECT?

16 A. THAT IS CORRECT.

17 Q. AND TALKING TO HIM THROUGH THE DOOR?

18 A. NORMALLY THROUGH THE TRAP DOOR, YES, SIR.

19 Q. SO YOUR ACTUAL CONTACT WITH HIM HAS BEEN QUITE  
20 MINIMAL IN TERMS OF TOTAL TIME. WOULDN'T YOU AGREE?

21 A. APPROXIMATELY TEN MINUTES ONCE A WEEK.

22 Q. YOU DON'T REALLY HAVE ANY KNOWLEDGE AS TO WHAT  
23 TYPE OF PRISONER HE'S BEEN DURING THE TIME HE'S BEEN IN THE  
24 CUSTODY OF THE DEPARTMENT OF CORRECTIONS, DO YOU?

25 A. I HAVE NO IDEA.

1 MR. AHLER: THANK YOU.

2 NO FURTHER QUESTIONS.

3 THE COURT: REDIRECT?

4 MR. STERLING: NO, YOUR HONOR.

5 THE COURT: THANK YOU. MAY STEP DOWN

6 SIR. WATCH YOUR STEP, PLEASE.

7 MAY THIS WITNESS BE EXCUSED?

8 MR. STERLING: I WOULD REQUEST SO, YOUR

9 HONOR.

10 THE COURT: YOU'RE EXCUSED, SIR.

11 MR. STERLING: YOUR HONOR, ONE FINAL

12 THING FROM THE DEFENSE AT THIS POINT. I HAVE PRESENTED THE  
13 WITNESSES PREVIOUSLY TO THE COURT. AS THE COURT IS AWARE, I  
14 HAVE DONE SO OUT OF MY OBLIGATION AND MY REQUIREMENTS UNDER  
15 STATE VERSUS CARRIGER. WITH THAT, I'LL STOP THERE, YOUR  
16 HONOR.

17 I HAVE ALSO ADVISED MY CLIENT THAT HE HAS THE  
18 OPTION TO TESTIFY IF HE SO CHOOSES. I WOULD ASK NOW THAT HE  
19 EXERCISE THAT OPTION INDIVIDUALLY AND ANSWER THE COURT. AS  
20 THE COURT IS AWARE, PART OF -- AND I'M NOT TRYING TO MAKE A  
21 RECORD OR ANYTHING, JUST MY CLIENT AND I HAVE NOT SEEN EYE  
22 TO EYE ON WHAT MITIGATING FACTORS TO PRESENT OR WHAT  
23 POSITION TO TAKE ON THIS THING. SO I HAVE BEEN GUIDED BY MY  
24 OBLIGATION UNDER STATE VERSUS CARRIGER INDEPENDENT OF HIS  
25 INSTRUCTIONS. AND I HAVE -- I SUBMIT TO THE COURT THAT I

SUPERIOR COURT



1 HAVE COMPLIED WITH THAT. I WOULD REST AT THIS POINT IN TIME  
2 AND LEAVE IT UP TO MY CLIENT AS TO WHETHER HE WISHES TO  
3 TESTIFY OR HE WISHES TO OFFER ANYTHING TO THE COURT AT THIS  
4 TIME.

5 THE COURT: THAT'S ENTIRELY UP TO HIM.  
6 COURT HAS NO FEELING ONE WAY OR THE OTHER.

7 MR. STERLING: I WOULD ASK, HOWEVER, THAT  
8 THE COURT INQUIRE OF HIM AS TO WHETHER OR NOT HE WISHES TO  
9 MAKE A STATEMENT UNDER OATH OR WITHOUT OATH.

10 THE COURT: DO YOU WISH TO MAKE A  
11 STATEMENT UNDER OATH OR WITHOUT OATH, MR. LOPEZ?

12 THE DEFENDANT: NO, SIR.

13 THE COURT: VERY WELL.

14 MR. STERLING: WITH THAT, YOUR HONOR, WE  
15 WOULD REST.

16 THE COURT: ANYTHING FURTHER, MR. AHLER?

17 MR. AHLER: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: ALL RIGHT. THIS FINAL  
19 DOCUMENT HERE, AGAIN, I DON'T REALLY UNDERSTAND IT. YOU'RE  
20 CHALLENGING THE STATUTE AS BEING VAGUE AND OVER BROAD. WHEN  
21 ALL OF A SUDDEN WE GET WALTON VERSUS ARIZONA, WHICH TELLS US  
22 ADMITTEDLY FOR NOW, THAT FIVE TO FOUR WAS IT.

23 MR. STERLING: YES, YOUR HONOR.

24 THE COURT: THAT OUR STATUTES FURNISH  
25 SUFFICIENT -- STATUTES AND RULES FURNISH SUFFICIENT GUIDANCE

1 TO SENTENCE, TO SATISFY THE EIGHTH AND FOURTEENTH AMENDMENT.  
2 NOW, DO YOU WANT TO ADD TO THIS MEMORANDUM?

3 MR. STERLING: YES, YOUR HONOR I WOULD  
4 LIKE TO ADD SOMETHING TO IT.

5 THAT WAS A QUESTION. DO YOU WISH US TO ARGUE  
6 AT THIS POINT BECAUSE I AM PREPARED TO ARGUE. ON THE OTHER  
7 HAND, I DO HAVE A CASE I WOULD LIKE THE COURT TO REVIEW  
8 BECAUSE I THINK IT EXPLAINS OUR POSITION AND I WAS LOOKING  
9 RIGHT NOW FOR MY COPY, PARTIAL COPY OF WALTON VERSUS  
10 ARIZONA. JUST FOUND IT. IF I CAN, I THINK -- THE SITUATION  
11 WE FIND OURSELVES IN -- DO YOU WANT US TO ARGUE THIS POINT  
12 OR DO YOU WANT TO REVIEW THE EVIDENCE AND HAVE US COME BACK  
13 AND ARGUE?

14 THE COURT: I THINK WHAT I WANT TO DO IS  
15 DETERMINE THE DATE AND TIME WHEN WE CAN CONCLUDE THIS MATTER  
16 AND YOU CAN PRESENT YOUR ARGUMENT AT THAT TIME ON THIS ISSUE  
17 AND AT WHICH TIME I WILL RETURN THE SPECIAL VERDICT AS  
18 REQUIRED BY LAW AND PROCEED WITH THE SENTENCE. CAN YOU  
19 GENTLEMEN AGREE ON A DATE AND TIME CONVENIENT?

20 MR. STERLING: TUESDAY OR WEDNESDAY OF  
21 NEXT WEEK AND THEN THREE WEEKS BEYOND THAT, YOUR HONOR. WE  
22 HAVE TALKED ABOUT IT AS I HAVE ADVISED YOUR SECRETARY.

23 THE COURT: WELL, I DON'T WANT TO DO  
24 THESE THINGS ON A WEEKDAY. WE'LL BE IN TRIAL. WE HAVE OUR  
25 REGULAR OVERHEATED MORNING CALENDARS. I PREFER TO DO THEM

1 ON A FRIDAY. WHAT'S THE NEXT DATE?

2 MR. AHLER: I'M AVAILABLE THE 19TH. THE  
3 WEEK AFTER THAT I THINK MR. STERLING IS GONE.

4 THE COURT: IS A THURSDAY?

5 MR. AHLER: THE 20.

6 THE COURT: 20, YOUR HONOR.

7 MR. STERLING: 20. I WILL BE IN  
8 WASHINGTON, D. C. WITH MY FAMILY ON VACATION.

9 THE COURT: WHAT ABOUT 27.

10 MR. STERLING: SAME HERE, YOUR HONOR, WE  
11 WILL BE RETURNING ON THE 28TH.

12 THE COURT: AUGUST 3?

13 MR. AHLER: STATE WOULD BE AVAILABLE ON  
14 AUGUST 3.

15 MR. STERLING: SAME HERE, YOUR HONOR.

16 THE COURT: ALL RIGHT. THEN WE WILL  
17 CONTINUE EVERYTHING TO AUGUST 3, 8:45 O'CLOCK A.M., THIS  
18 DIVISION, AT WHICH TIME WE'LL HEAR ARGUMENT ON YOUR  
19 CHALLENGE TO THE 13-703(F) AND (G), WHICH TIME THEREAFTER I  
20 WILL RETURN A SPECIAL VERDICT AND PROCEED WITH THE  
21 SENTENCING.

22 I WILL -- YOU WILL HAVE THOSE DOCUMENTS BACK  
23 AND THE TAPE BACK TO ME BY TUESDAY, IS THAT CORRECT?

24 MR. AHLER: YES.

25 THE COURT: AND THEN I WILL HAVE SOME

1 TIME WITH WHICH TO REVIEW THE TAPE OF DR. BENDHEIM AND YOU  
2 WANT TO GIVE ME A CASE TO READ.

3 MR. STERLING: YES, YOUR HONOR. I  
4 APOLOGIZE TO THE COURT BUT I WAS ONLY ABLE TO GET IT  
5 YESTERDAY. IT WAS STATE VERSUS TUTTLE,

6 THE COURT: THIS IS IN CONJUNCTION WITH  
7 WHAT NOW?

8 MR. STERLING: THIS IS IN CONJUNCTION --  
9 IT ADDRESSES EXACTLY THE POINT I'M RAISING BOTH IN MY MEMO  
10 AND I'M GOING TO RAISE UNDER STATE VERSUS WALTON OR ARIZONA  
11 VERSUS WALTON. IT'S STATE VERSUS TUTTLE, OUT OF THE SUPREME  
12 COURT OF UTAH DECIDED APRIL OF, OR ACTUALLY DECIDED IN APRIL  
13 OF '89. SOMETHING'S WRONG. IT ADDRESSES THE QUESTION ON  
14 STABBINGS AND THE CRUELNESS ON DEPRAVED. I WOULD GIVE YOU  
15 MY COPY JUST SAVE YOU THE TROUBLE GETTING IT.

16 MR. AHLER: COULD I HAVE A CITATION, YOUR  
17 HONOR?

18 THE COURT: 780 P.2D 1203, UTAH 1989. I  
19 DON'T SEE A UTAH CITE ON IT.

20 MR. AHLER: THAT'S FINE. PACIFIC CITE  
21 WOULD BE SUFFICIENT.

22 THE COURT: P.2D, 780 P.2D 1203.

23 MR. STERLING: AND, YOUR HONOR, DO YOU  
24 HAVE A COPY OF STATE VERSUS WALTON?

25 THE COURT: NO. BRING ME ONE.

100-100000

1 MR. STERLING: I WOULD IF I COULD, YOUR  
2 HONOR. I DON'T HAVE ONE EITHER.

3 THE COURT: DO YOU HAVE ONE MR. AHLER?

4 MR. AHLER: YES, I TO.

5 THE COURT: HAVE SOME COPIES MADE. YOU  
6 GOT ENOUGH FOR EVERYBODY?

7 MR. AHLER: I HAVE GOT THE WHOLE THING  
8 RIGHT HERE. COULD YOUR STAFF MAYBE XEROX IT NOW?

9 THE COURT: OKAY. ALL RIGHT.

10 IN THE INTERIM I WILL REVIEW THESE CASES, I  
11 WILL REVIEW DR. BENDHEIM'S TAPE. WHAT ELSE -- OH, THEN I  
12 WILL REVIEW THE TESTIMONY OF THE TWO WITNESSES, IS THAT  
13 CORRECT?

14 MR. AHLER: THERE'S ALSO THE DEPARTMENT  
15 OF CORRECTION RECORDS THAT --

16 THE COURT: THAT'S RIGHT. OKAY.

17 COURT STANDS IN RECESS.

18 \* \* \* \* \*

19

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21

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23

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25

SUPERIOR COURT

# **EXHIBIT N**

March 12, 1987 time is approximately 11:45 a.m. This is an interview being conducted at the office of the County Attorney on State of Arizona v. Samuel Lopez, present are myself Paul Ahler from the County Attorney's Office, Joel Brown, who represents Defendant Lopez and Udelia Sabori who is going to be interviewed by Mr. Brown.

Q: How old are you?

A: I'll be seventeen this month.

Q: Okay and you live in Phoenix or Mesa?

A: Phoenix.

Q: Are you employed?

A: No.

Q: Are you in school?

A: No.

Q: Back on I'm not sure of the day, I think its October 29, were you working as a babysitter for someone?

A: I was staying with Pauline Rodriguez.

Q: Okay. And is she a friend of yours?

A: A friend.

Q: Okay and how long had you been staying there?

A: About a week.

Q: And did something happen that evening on the 29th involving a Samuel Lopez?

A: Well,

Q: Well personally do you even know who he was?

A: Yes.

Q: And how did you know who he was?

A: Cause Pauline Rodriguez and Ralphie told me about him and I used to see him pass through the house a lot of times.

Q: Pass through the house?

A: Well passing around the house.

Q: Oh pass by the house.

A: Umhum.

Q: Had you ever had any contact with him before then?

A: No.

Q: You never spoke to him at all?

A: Not till the night before that (unintelligible) that he killed the lady.

Q: Okay. At some point I think on the 29th maybe the 28th did you have contact with him at the Rodriguez house, at Pauline's house?

A: Yes.

Q: Okay just tell us what happened.

A: At Pauline's house?

Q: Right.

A: All of us at the park and after the park I went (unintelligible) and I called Pauline's house around 11:15 p.m. and around 10 or 15 minutes later there was a knock on the door and Ralphie went down to check what it was.

Q: Who's Ralphie?

A: Pauline's boyfriend.

Q: And who else was there besides yourself and Ralphie? Was Pauline there?

A: Pauline and her kids.

Q: How old are her kids?

A: One is three, another one is two and one is a year old.



Q: And what happened when Ralphie went down to check the door?

Q: Well he told me it was for me that there was this guy by the name of Angel and then I said.

Q: Did you know anyone named Angel?

A: Yes. I went downstairs and then I after I went downstairs I asked him what's he doing there you know and he goes I just want to talk to you and I said

Q: Who were you talking to?

A: Angel.

Q: Okay. What's his last name?

A: I don't know I just met him that night.

Q: Where did you meet him?

A: At the park.

Q: What park is that?

A: I don't know the name of it. It's on 28th Drive and Polk.

Q: Had you asked Angel what he was doing there?

A: Yes and he said he just wanted to talk to me and then I asked him how he knew that I lived there and he told me that Sammy had told him.

Q: Alright now at this point did you know who Sammy was?

A: Yes.

Q: Okay had you ever talked to Sammy before?

A: I talked to him at the park that day.

Q: Okay and was that earlier in the day or earlier in the evening or

A: It was about 8 or 8:30.

Q: And how long did you talk to him?

A: About an hour and a half.

Q: And what did you talk about?

A: He was asking me where was I staying and I told him Pauline's and he started telling me that Pauline and Ralphie were really nice people but that Ralphie had his temper that every time he gets high on something that he's kind of rude he starts hitting Pauline or something like that.

Q: Now at this point was Lopez drinking at all?

A: No not yet.

Q: Were you drinking at all?

A: No.

Q: Were there any drugs involved?

A: No.

Q: Okay Angel said you asked Angel how did he know that you lived there and Angel said that Sammy told him what happened after that?

A: Then I told him he goes "what were you doing" and I told him I was getting ready for bed and he goes "so early" and I go it's already late and he goes to me I have a surprise for you and I go what and then Sammy jumped out of the alley and he just say hi.

Q: Okay where's the alley was it directly at the front door?

A: Uh huh.

Q: Okay where's the alley (unintelligible)

A: It's next to the to my apartment.

Q: Well maybe do you remember her address?

A: Whose?

Q: Pauline's?

A: Yes it's 340 North 28th Drive.

Q: 340 North 28th Drive, okay this is the house here?

A: Uh huh.

Q: This is the alley?

A: Yes.

Q: Where's the front door - here?

A: Right here.

Q: About right there.

Q: You said at some point Angel said I have a surprise for you and Sammy came from the alley - what happened now.

A: Uh huh. He said hi and I said hi and then he was already drunk.

Q: Okay he was hollering at you (unintelligible) Did you smell it or see or?

A: Yeah you could smell it a little bit when he was talking and then he was talking like he was flapping and he was different from since I talked to him in the park.

Q: And about what time was this?

A: When he went over there. About 11:30.

Q: And do you remember what he was saying?

A: At first we had a nice conversation he was starting saying jokes and he started asking me questions about Cecilia, Pauline's sister, and he started asking me if Cecilia was alright with her son's father how she gets along with him and if I'd seen her if she talks about him when every time I talk to her and he started saying he started asking me what was my nickname after that and I told him my nickname he says that nickname wasn't good for me.

Q: He said what?

A: He said those nickname didn't fit me.

Q: What's your nickname?

A: (unintelligible)

Q: What?

A: (Unintelligible)

Q: Oh, okay. What happened then?

A: And then Angel said that the good name for me was shorty and I said well I'm not that short and then Sammy started saying to him I was and I said that's just because you're tall so for awhile he I told him I wanted to go inside no first he goes to me that if I wanted to get high and I said that I didn't get high and then he goes well I do and goes and I go do you do it a lot and then he said well yeah and I said what else do you do and he says that he takes cocaine and did heroine and then he started asking me if I ever did cocaine and I said no and then he started insisting about to get high with him and I said no and he said well I'll be back later and then he went back to the alley and I thought he was just at the corner and I asked Angel if he was still there and Angel said no he thinks that he went back to the back of the apartment and then when he came back

Q: Okay wait a second. After you had this discussion with him about what he was telling you about how he was getting high when he just left?

A: He says I'll be back.

Q: Did Angel stay there.

A: Yes.

Q: And you're talking at them in the front doorway basically?

A: Yes.

Q: And at some point Sammy returned?

A: Yes.

Q: About how much later was that?

A: About five minutes or less.

Q: What happened when he returned?

A: When he returned he goes look at me I'm shaking he goes he put his hand in front of me

and his hand was shaking and he couldn't stand still he was just moving around and then he goes I'm having a little bit of trouble standing up and he was falling down.

Q: He said he was having a little bit of trouble standing up?

A: Well I said he was having a little trouble because he was he would put his hand on the wall and just stand there and then he (unintelligible) and then after he came back we did that I told him that I was gonna go in because it was late it was gonna be it was about 10 to 12 and I told him it was already late and I had to go in and he says no stay up awhile and goes stay up about 5 minutes later and I said I have to go in now and he says just 5 minutes and I said just 5 minutes and after we started talking again from my nickname again and after that 5 minutes passed and I said I'm gonna go in now and he goes no you can't go in and I said why not and he goes cause we're having a good time and I go I have to go in already because Pauline will get mad and he goes I don't care if Pauline (unintelligible) he goes you're talking to me I go Ralphie is here and Ralphie doesn't like you and he'll get mad and he goes I don't care what Ralphie (unintelligible) and I just put my hand on the door and he pulled the door and closed the door on my hand and I said you better let me go in cause you're hurting my hand and he goes

Q: Now where was he, was he on the outside of the door?

A: Yes.

Q: Were you on the inside of the door I mean on the inside of the apartment or the house?

A: I was in between the door in the middle where the door is at.

Q: You were in the doorway?

A: Yes.

Q: And what happened after that?

A: I put my hand on the door not on the door but on the wall and he closed the door on my hand and I told him to let the door go cause

he was hurting my hand and he said for me to move my hand if I didn't want my hand to be hurt to remove the hand from there and I got scared and kept saying no and I told him if he didn't let go of the door I was gonna call Ralphie he said he didn't care and then he kept pulling the door so I moved my hand and he closed the door and then Angel had a lock and he locked the door from the outside and I go I told Angel that he'd better remove that lock cause if he didn't I was gonna call Ralphie and then Sammy said that he didn't care if I called Ralphie because the door had a lock on it and he wouldn't be able to come out and I told him Ralphie didn't care he could jump the window and then after awhile Angel noticed that I wanted to go in already so Angel oh what the heck just go away Sammy I hit him with the lock and I open the door to walk in again and then Sammy

Q: Maybe I don't understand. Did he lock you outside of the door?

A: Yes. Cause he had a master lock with a key he put it on the door and then when removed it I opened the door and I told him I was gonna go back in again and then Sammy goes no you're not going in but when the door was locked when he left the door Sammy coming for my hand he pulled me he was trying to pull me where he was at with support and I said to let me go he was hurting me and he says no just come and talk to us here at the porch and I go no I can't and I go really scared and then Angel noticed and that's when he removed the lock from the door and then I opened the door and I said I couldn't and I said I'm going in now and Angel said okay and then Sammy started saying no you can't go in because we're still talking we're having a nice conversation and I said well I want to go in now and he kept saying no no so after awhile I go scared and Angel kept telling Sammy lets go Sammy and he kept saying no and he kept saying let's go Sammy and he says shut up Angel and then he grabbed my hand again and Angel got him from his elbow and told him let's go Sammy leave her alone she wants to go in it's getting late anyway and then Sammy kept saying no that he wanted to talk to me and everything and I said well if you don't let me go in I'm gonna call Ralphie he said go ahead and call Ralphie I don't care I could (unintelligible) he can't do nothing to me and then I really go scared

and then he closed the door on my hand again and that's when I called Ralphie and Pauline came down and she had a stick maybe she got it from behind the door but she had a stick and she started hitting on the door and yelling at Sammy and Angel to get out to get out and leave me alone and stop bothering me and then Pauline told me to go upstairs again so I did and I heard Pauline tell Sammy to go that she didn't want no trouble and that Ralphie was already mad cause he was there and he said he didn't care to call Ralphie and Ralphie went downstairs and thats when I heard Sammy didn't care that he was gonna kill him and he cussed him out and Ralphie went downstairs and he goes what is wrong with you and then Sammy goes you want a beer and then Ralphie says no I don't want no beer he goes come on we're friends let's drink beer he goes no I'm not your friend Ralphie kept saying and then Pauline went upstairs and she told me not to go downstairs and she went downstairs and she went up and she stayed half the stairs to go up and then Pauline told me and then Ralphie finally forced Sammy I'm not too sure cause I heard a noise downstairs so I heard Sammy say don't push me I just want to be your friend and then I didn't hear more after that and then after awhile about 2 minues later Pauline and Ralphie went upstairs and then Ralphie asked me what happened I told him he told me I should have called him when Sammy locked me out from the door that he didn't care he would have jumped the window. And Pauline told me that Angel when Ralphie came down that Angel told Sammy Sammy let's go and Sammy said no so he got scared when he saw Ralphie he got scared so he just walked to the sidewalk and stayed there. He was yelling at Sammy from there that he wanted to go.

Q: Did you ever see Sammy since then?

A: I saw him the next day. He was at the park.

Q: What time did you see him at the park?

A: It was about 10 or 11 he was on a bike.

Q: Did you talk to him then?

A: No.

Q: That's the only time you've seen him since then?

A: No he kept I used to see him walk through the alley but I didn't talk to him.

Q: You never talked to him since then?

A: No.

Q: Did you learn that the lady was killed in your neighborhood?

A: The next day. About 7:30 p.m.

Q: Did you hear anything unusual that night?

A: Well I heard rumors saying that they thought it was Sammy.

Q: Okay but did you actually hear something?

A: No.

Q: Did Sammy ever try to break into the house like force the door open?

A: No.

Q: But he did grab you and stop you from going into the house?

A: Yes

This is the end of the interview with Udelia Subori.



# **EXHIBIT O**

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF MARICOPA

3  
4  
5 STATE OF ARIZONA,

6 PLAINTIFF,

7 VS.

8  
9 SAMUEL VILLEGAS LOPEZ,

10 DEFENDANT.

PUBLIC DEFENDER  
OCT 24 1990  
APPEALS RECEIVED

NO. CR163419

11  
12 Phoenix, Arizona  
13 August 3, 1990

14  
15  
16 BEFORE: THE HONORABLE PETER T. D'ANGELO, JUDGE

17  
18  
19 REPORTER'S TRANSCRIPT OF PROCEEDINGS

20 SENTENCING

21  
22  
23 LISA VITOFF

24 OFFICIAL COURT REPORTER

25  
LISA VITOFF, RPR  
SUPERIOR COURT

A P P E A R A N C E S

FOR THE PLAINTIFF:

MR. PAUL AHLER,  
Deputy County Attorney

FOR THE DEFENDANT:

MR. GEORGE STERLING,  
Attorney at Law

P R O C E E D I N G S

(The following proceedings were held in open court:)

THE COURT: State of Arizona versus Samuel  
Villegas Lopez, closing arguments, sentencing.

MR. AHLER: Paul Ahler for the State.

MR. STERLING: George Sterling on behalf of  
the defendant. Defendant is present and in custody.

THE COURT: The record will reflect that the  
court has reviewed all of the evidence and exhibits  
presented at the hearing on July 13. The court has  
further reviewed the State's supplemental sentencing  
memoranda and the defendant's post hearing memoranda  
concerning aggravating or mitigating factors.

I believe I permitted the defense to present

LISA VITOFF, RPR  
SUPERIOR COURT

1 additional argument on the -- on closing argument, I  
2 guess you might call it, on the issue raised in the  
3 defendant's memorandum challenging 13-703(F)(1)(a) as vague  
4 and overbroad and a violation of the 8th and 14th  
5 Amendments of the Constitution.

6 You may make whatever further arguments you  
7 desire at this time, Mr. Sterling.

8 MR. STERLING: Your Honor, I would ask the  
9 court, because of the differences, some guidance at this  
10 point. My reading of 703 requires the State to prove the  
11 aggravating factors by beyond a reasonable doubt, under  
12 standard rules of evidence.

13 I wish to address that separately. Then I  
14 wish to address that which we have the burden of proof,  
15 of which is the mitigating circumstances, by a  
16 preponderance.

17 Do you wish me to proceed at this point.  
18 I'll do so, if the court directs. Otherwise, I think  
19 that the State ought to be required to proceed with that  
20 which they have the burden of proof, which is the  
21 aggravating circumstance.

22 THE COURT: I believe the State has already  
23 proven the aggravated circumstance and that the Supreme  
24 Court in its opinion has accepted that proof. You have  
25 previously, orally, asked for a motion for directed

1 verdict on several different occasions. The proof was  
2 presented at trial. I see no reason why the State has to  
3 reprove everything.

4 I participated -- I presided at the trial --  
5 excuse me. I heard the evidence. I observed the  
6 witnesses. The Supreme Court has approved those  
7 findings. I don't know what else you got to argue about.

8 MR. STERLING: Well, if I can, your Honor,  
9 I'd like to begin with the cruel, especially cruel,  
10 heinous and depraved.

11 I note that the State's sentence memorandum  
12 tends to drop out of especially, but the reason I submit  
13 that we have to argue cruel and heinous, depraved,  
14 whether or not the State has proven it, is because of two  
15 things: Number one, the law has changed since this case  
16 was decide initially; number two, it was never argued.  
17 There was never a record presented to the Supreme Court  
18 or presented to this court at the first sentencing, that  
19 the State had failed -- or the evidence submitted by the  
20 State at trial failed to establish, as a matter of law,  
21 any of the three dissected sections of F section.

22 If I could, that's what I submit is in front  
23 of you today, is exactly, first, the legal issue and the  
24 factual issues, if I could.

25 Legally, the State argues that because this

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SUPERIOR COURT

1 woman died -- and she was stabbed 37 times. I think is  
2 the number they used originally -- and that the death was  
3 somewhat prolonged, or the incident, the struggle was  
4 prolonged, that that's cruel, heinous and depraved.

5 I have submitted to this court the Tuttle  
6 case out of Colorado -- I believe it's out of Utah, and I  
7 submit, on the evidence that we have done, the State has  
8 failed to prove cruel, heinous and depraved as it is  
9 currently and constitutionally required to be  
10 interpreted.

11 If I may, the United States Supreme Court in  
12 Walton ruled and addressed the rule, heinous and depraved  
13 statute by -- they upheld it.

14 The interesting thing, how they upheld, was  
15 they even grafted something that the Arizona Supreme  
16 Court has never done, they even grafted upon it a  
17 constitutional standard that must be adhered to.

18 It's not like -- and the trouble with, as  
19 pointed out in the Adamson case in the Ninth Circuit and  
20 the Supreme Court decision in Walton, if you read both of  
21 them -- which by the way, I don't know if the court got a  
22 complete copy of Walton, I only got 39 pages of it or 37  
23 pages of it, it's 118 pages long -- the difference in  
24 Walton and Adamson is, when you focus on the standards  
25 that have been established by the Supreme Court of

LISA VITOFF, RPR  
SUPERIOR COURT

1 Arizona, or you establish upon how many times the Arizona  
2 Supreme Court has not followed it's own standards.

3 Walton said it's constitutional if you  
4 adhere to those standards. And the standard they said on  
5 cruel and cruel punishment, especially cruel, was, the  
6 court has pointed out, that it had limited the cruelty  
7 circumstances in prior cases to situations where the  
8 suffering of the victim was intended by or foreseeable to  
9 the killer. That they established -- I'm reading from  
10 Page 21 of the majority opinion, it's also repeated. I  
11 believe, at Page 8.

12 Our statute 703(F)(6) says, the killer  
13 committed the crime in an especially heinous, cruel or  
14 depraved manner.

15 Every one of those adjectives used are  
16 mental and emotional adjectives. They reflected on the  
17 mentality of the killer. And I submit to this court,  
18 there is no evidence of that in this case.

19 Under the testimony of doctor -- I'm going  
20 to get lost in names, your Honor -- under Dr. Keene's  
21 testimony, yes, this woman was stabbed multiple times.  
22 but not a single one of those blows, other than the cut  
23 throat, was immediately incapacitating.

24 It is undisputed, the Supreme Court, the  
25 same Supreme Court you would tell me that confirmed or

1 affirmed your finding of cruel, heinous and depraved  
2 previously, made no debate about it, there was a  
3 prolonged and bloody life and death struggle in that  
4 apartment, and it went throughout it.

5 I submit to the court that you can't --  
6 there's no evidence on the cruelty. What evidence does  
7 the State present to this court that shows that this  
8 killer intended her to fight back, or used any stroke he  
9 could, or any expertise he had, to prolong her life and  
10 prolong this struggle?

11 Dr. Keene's testimony is exactly the  
12 opposite. Every blow was obviously in the plane of a  
13 fatal attack. The fact that this 59 year old woman  
14 fought like H E L L for her life, is not something that  
15 changes what would normally be a regular case, not  
16 warranting the death penalty, into some discretionary  
17 type of death penalty under cruel, heinous and depraved.  
18 The fact the victim fights for her life does not change  
19 and does not allow this court to do it.

20 There must be a mentality that this court  
21 can find, or some evidence that the defendant intended  
22 the prolongation of life in a torture situation or a  
23 physical abuse situation. And the own evidence which the  
24 State presents, properly interpreted by the expert,  
25 discounts that.

LISA VITOFF, RPR  
SUPERIOR COURT



1                   If I could, the heinousness doesn't do any  
2                   better. In a very recent case, State versus Robison --  
3                   Robinson, 64 Arizona Advance Reports 12, I believe it was  
4                   decided a week and a half ago by the Arizona Supreme  
5                   Court, the term heinousness and depraved focus on the  
6                   killer's state of mind and attitude at the time of the  
7                   offense.

8                   State versus Wallace, State versus Gretzler,  
9                   five factors can support a finding of a mental attitude  
10                  which was heinous and depraved: One, the appellant's  
11                  apparent relishing of the murder by the killer; two, the  
12                  infliction of gratuitous violence on the victim beyond  
13                  the murder itself; three, needless mutilation; four,  
14                  senselessness of the crime; and five, helplessness of the  
15                  victim.

16                  And I submit to the court, if the Gretzler  
17                  five, which were adopted by the Supreme Court in Walton,  
18                  echoed the law of this State, there's no evidence  
19                  submitted here -- this victim fought, there were two  
20                  weapons involved. The defendant was bleeding, that is  
21                  how the identification was made. Yes, there was a  
22                  struggle. Struggle means a two sided thing. She fought  
23                  for her life. She had a right to fight for her life and  
24                  her dignity. She did so. But that does not change what  
25                  would otherwise be a murder not warranting the death

LISA VITOFF, RPR  
SUPERIOR COURT

1 penalty into warranting a death penalty.

2 What evidence does the State offer to this  
3 court, anywhere in this record, that the defendant  
4 relished the murder? Relish is a very special term  
5 there. There's no kind of testimony here, as there was  
6 in other cases.

7 What evidence does the State offer that the  
8 defendant inflicted gratuitous violence on the victim.  
9 Dr. Keene specifically discounts that. That's why we  
10 brought him in.

11 Is there anything to show that the victim  
12 was helpless at any time? No. This victim never  
13 submitted to the violence. She never was put in a  
14 position of helplessness by constraint. She was never  
15 tied up. She didn't -- this isn't an execution style  
16 murder. This is where the victim fights.

17 Go back, look at the case, look at the crime  
18 we're dealing with, and try to match those legal factors,  
19 constitutionally required, restricting interpretation of  
20 (F)(6), and that is not in this case.

21 Yes, as pointed out in the case of Tuttle,  
22 every stabbing case is gross, it's messy. Nobody wants  
23 to die. You don't die fast with a knife. Everybody with  
24 military training or any kind of expertise will tell you  
25 you must have the expertise to use a knife and to use

LISA VITOFF, RFR  
SUPERIOR COURT

1 what amounts in this court -- I had thought, when I was  
2 going on, to -- as I had a chance to think, I thought of  
3 how can I demonstrate to the court, because of the  
4 court's candor with us during presentation of evidence,  
5 how can I present to the court what I'm trying to  
6 establish. I thought of actually bringing in a machine.  
7 Life hangs by a thread, we say as a cliché, but if I hung  
8 a chunk of meat, just like in Rocky I, II or IV. If I  
9 hung a chunk of 35 pounds of meat by a string through its  
10 center, and I handed the court one of these knives and  
11 said, okay, using a two and a half inch knife, using a  
12 three-inch knife, I want you to take that chunk of meat  
13 and I want you to cause it to fall, cut the string that  
14 holds the life, the thread, with one blow, and if you  
15 can't do it, then I can accuse the court of cruel,  
16 heinous and depraved.

17 From a purely scientific point of view.  
18 that's what I'd asked the court to imagine. You can't do  
19 it. These were messy weapons. Let's take it one step  
20 further. Why are the weapons messy? Why was this a  
21 grizzly murder? Is a very simple reason, you look at  
22 what has been presented to this court.

23 The defendant didn't enter that with the  
24 premeditation, with the forethought, with the intent to  
25 torture or abuse this victim. The weapons found were

1 weapons of opportunity. They were her own knives. Had  
2 the -- well, had a .357 Magnum been there, which the  
3 defendant could have gotten, or a .44 Magnum, we wouldn't  
4 be here at this hearing.

5 The trouble was, the defendant didn't have  
6 available to him the premeditation to enter to murder, so  
7 that he would take a weapon, even if he had one  
8 financially available to him and it was not a weapon of  
9 opportunity there.

10 I know when I said it in the presentence  
11 memorandum, it's somewhat gross, it may be -- I don't  
12 mean any affront to the victim, but the defendant has  
13 been convicted of a murder, an intentional murder.  
14 There's no question he intended to kill the victim. But  
15 he did do the best he could with the weapons available.

16 There is no showing by the State that he  
17 had, as pointed out by the Tuttle defense, the expertise  
18 to use a knife correctly the first time, so that there  
19 would be no suffering, so that the victim couldn't fight  
20 back, no.

21 The defendant has spent his, almost his  
22 entire adult life in prisons. He's never served in the  
23 military. He's never had access to weapons. That's what  
24 his history shows us. His entire criminal history. This  
25 is the first case involving weapons. He has no inherent

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SUPERIOR COURT

1 expertise. Was there any showing at trial -- and I've  
2 gone back through the transcripts -- that there were  
3 butcher knives available, that there were butter knives,  
4 than these two little short stubs? No, there was not.  
5 That he had a choice to pick and chose not to, in order  
6 to prolong her life.

7 Well, why didn't the defendant take a gun  
8 with him, if his intent was to murder? Well, first of  
9 all, the defendant had been released from prison less  
10 than two weeks before this incident. He had no money, no  
11 job. He was living in a car.

12 In that situation, people don't tie up the  
13 amount of money necessary -- first of all, he doesn't  
14 have it. And you don't tie up your capital into a nice  
15 little tool. Professional burglars do, robbers do, yeah.  
16 but if we do that as a criteria in cruel, heinous and  
17 depraved, guess what we've just done, we've made our  
18 criteria unequal and unfair. Because only the, only the  
19 poor will be suddenly found to be cruel, heinous and  
20 depraved, those who have to pick up rocks and smash  
21 people's head, because they don't have a knife, they  
22 don't carry a knife all the time because they don't have  
23 the \$12 to buy it with.

24 That's where the defendant finds himself.  
25 There is nothing in this record that supports a finding

1 that the defendant, one, intended or foresaw, was it his  
2 intent that the victim prolong her life by struggling  
3 with him. In fact, everything in the evidence discounts  
4 that. He was trying to kill her. If he could have  
5 killed her, incapacitated her with his first blow, again,  
6 we wouldn't be here. But it is physically impossible to  
7 do it with the knives you've seen, unless you have the  
8 kind of expertise that we give Navy SEALs and our best  
9 combat people, the people trained for hand-to-hand combat  
10 at close range with a less than expert weapon.

11 The interesting thing I would call to the  
12 court's attention, when we're dealing with this, is if  
13 the Supreme Court of the United States says, okay, says,  
14 you've got a constitutional standard. If these  
15 interpretations are judicially overlayed and applied by  
16 the trial court. Well, I submit to the court, we may not  
17 like how this murder looked. We may sit here and say,  
18 it's senseless, there's no excuse for it. But that's not  
19 the standard we're required to apply.

20 We are lawyers, we are judges. We are  
21 required to apply -- this is a state of law, not of man.  
22 There should be no discretion. And whatever the court  
23 feels -- and I think I'm fairly transparent in my feeling  
24 of the current federal standard of the death penalty  
25 litigation -- it is the law as we exist today. And the

LISA VITOFF, RPR  
SUPERIOR COURT

1 law requires it to be a discretion. a limited discretion.  
2 not to find what the court finds. a pleasing or not  
3 pleasing or grotesque.

4 It is required that it be established that  
5 the defendant committed this murder with an intent to  
6 cause abuse and physical pain to the victim before she  
7 died, over and above the murder. And that once, either  
8 during the murder or after the murder, it was done.  
9 because he relished the bloodletting, he relished it.  
10 made him macho to murder. The Gretzler standards. the  
11 Steelman standard, the history in Arizona, where is that  
12 evidence in this case?

13 What you have is. you have a man who took a  
14 human being. and because of inexperience and limited  
15 weapons, rendered something that no human being could  
16 look at without vomiting, but it doesn't make it cruel.  
17 heinous and depraved. as currently interpreted by the  
18 Arizona Supreme Court and the United States Supreme  
19 Court, and more importantly, it doesn't make it an  
20 especially cruel, heinous and depraved, as required by  
21 our statute.

22 And that basis, your Honor. that is why. I  
23 submit to the court, the evidence in this case is  
24 undisputed. This court cannot find -- and the defendant  
25 is entitled to a directed verdict, as to the State's

1 allegation of especially heinous, cruel or depraved in  
2 this case.

3           Once we get past the initial disgust with  
4 the grislyness of this murder, as the Supreme Court of  
5 Utah had to in Tuttle, you look at it and you say we're  
6 dealing with the mechanics of death.

7           What established the mechanics of death in  
8 this case? Was it defendant's intent to cause pain, to  
9 relish the murder or somehow prove his macho-ness? No.  
10 It was the limitations imposed by a lack of planning, or  
11 as we call it, murder premeditation. This was not a well  
12 premeditated murder. And his choice of weapons, which  
13 were dictated not by the defendant but by the  
14 circumstances he found himself in.

15           The final thing I want to address on cruel,  
16 heinous and depraved is, because it tends to be implied  
17 in all the literature I've read in this case, the trial  
18 record and everything else, we talk about a young, robust  
19 male attacking an infirm, elderly lady. So, I went back  
20 and I looked at the records that we have. And I wanted  
21 to see what was the physical size. If I'm going to stand  
22 up in front of this court, I'm going to say, hey, there  
23 was an extended, prolonged struggle, in which it was  
24 given as good -- as well as taken, by whichever  
25 participants, we better know something about the



1 participants.

2 According to the autopsy report, Estafana  
3 Holmes was a 59 year old female, described by family and  
4 friends as in robust health and active. She was five  
5 foot two tall and she weighed 124 pounds, on the autopsy  
6 table.

7 The defendant, as he was booked into jail a  
8 week after this, or five days after this, was 24 years  
9 old. A difference of 35 years. Five foot seven tall and  
10 150 pounds.

11 The trouble I have with the court's -- and  
12 as I've told you before, when you're dealing with cruel,  
13 heinous and depraved, this was not an unfair fight. This  
14 was not taking someone out in the desert, binding their  
15 hands with barbed wire, dancing around taunting them and  
16 then cutting hunks off of them. This was not a situation  
17 to where skin is, is peeled off someone in an  
18 incapacitated situation. This was a fight.

19 Yes, it was wrong that the defendant entered  
20 her house and it was wrong that he intended to kill her.  
21 and did kill her. But, as the Supreme Court says, where  
22 is the evidence that, over and above the killing, there  
23 was a relishing of the murder, that there was a choice to  
24 cause her pain.

25 There's no debate that Estafana Holmes, if

1 anyone in this courtroom. ever had a right to fight for  
2 her life and her dignity. she did. but the point I keep  
3 coming back to. how can that victim's exercise of that  
4 right, and the bad choice of available weapons. turn this  
5 into a cruel. heinous and depraved murder. Tuttle says  
6 it can't. And I submit to the court, that our law says  
7 it can't either.

8 If we apply the standards that the Supreme  
9 Court of the United States said you better apply.  
10 Arizona. to keep our death penalty constitutional, this  
11 is not a cruel, heinous and depraved murder.

12 If this court deviates from those standards.  
13 then maybe the Ninth Circuit is correct. Arizona courts  
14 have proven, by their deviation from their well-announced  
15 standards and their exceptions. that their exceptions are  
16 without end and that the Adamson decision rendering the  
17 Arizona State death penalty unconstitutional is the  
18 correct application.

19 The last case I cited to the court, the most  
20 recent one, which is the Eighth Circuit one, where  
21 Nebraska lost, there is -- that was exactly the problem  
22 there.

23 Nebraska had a death penalty statute,  
24 wantonly vial. and they had well-announced standards, but  
25 they weren't applying them. They were creating

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SUPERIOR COURT

1 exceptions after exceptions after exceptions.

2 I'm as much fighting for our death penalty  
3 statute as I am for this defendant's life, because under  
4 a correct interpretation, a constitutionally required  
5 interpretation of the worse standards adopted -- not my  
6 words, many commentators have said the most litigation  
7 breeding term, death penalty litigation, are the wantonly  
8 vial, especially cruel standards. That's the only one we  
9 got here.

10 That is basically my argument in support of  
11 our motion for a finding of no aggravating circumstances,  
12 your Honor.

13 As to the mitigation, I think a very  
14 important thing must be done before I go into this. At  
15 the first trial, and at the first sentencing, there was  
16 no mitigation offered. I'm stuck with the trial record  
17 in this case, where the defense offered no witnesses, no  
18 testimony.

19 But on remand, we have presented to the  
20 court as much as I can find, so that this court knows  
21 this defendant.

22 Before we go into that, I think it is very  
23 important that I demand something on the right of the  
24 defendant. To find an aggravating factor, 703 says it's  
25 beyond a reasonable doubt. It's the State's burden and

LISA VITOFF, RPR  
SUPERIOR COURT

1 its must be on regular evidence.

2 On mitigation, however, the burden switches,  
3 but so the does the standard. It is a preponderance of  
4 the evidence. I'm speaking now as the burden carrier in  
5 a civil case, and as to the first issue that we raise,  
6 which is is diminished mental ability or capacity of the  
7 defendant, part of our evidence, or the limited amount of  
8 evidence I had on this first appeal to the Supreme Court.  
9 the Supreme Court rejected it, saying not enough  
10 evidence.

11 Well, I've got the evidence in the record  
12 now. We've supplied the court with the interviews of  
13 Saborri and Rodriguez, which are in more detail as to  
14 this almost instantaneous change in the defendant's  
15 appearance between when he said come on with me. let's go  
16 get high, and he was the normal, shy, retiring, very  
17 polite Sammy Lopez. and seven minutes later, or 14  
18 minutes later, depending on whose better judgment of time  
19 you want to do, he returns, obviously intoxicated,  
20 obviously staggering, totally changed; aggressive, pushy.  
21 demanding, aggressive, physically abusive. Was this  
22 something strange to Paula Rodriguez? No. She'd seen it  
23 before, it happens to Sammy when he drinks.

24 As to the second issue, what evidence does  
25 the State offer that Sammy Lopez was not intoxicated,

1 that it did not change his personality. Saborri and  
2 Rogniguez were the State's own witnesses. There's no  
3 evidence to say it did not have an affect on him. The  
4 question to the court is let's characterize and let's  
5 quantify that affect.

6 I wish I could give you a hard decision, but  
7 as both experts who testified, one by video tape, said  
8 it's a difficult diagnosis. Pathological intoxication.  
9 where alcohol triggers something mentally, it's not  
10 intoxication, it's a misnomer. It's a reaction.

11 I submit, on the burden of proof, on a, on a  
12 preponderance. Dr. Dean, who is not a certified  
13 psychiatrist in this forensic psychiatry -- or pardon me,  
14 is not even certified in psychiatry, who has never seen  
15 or diagnosed a case of pathological intoxication, the  
16 only one he ever saw was when he was a resident in Utah.  
17 He personally has never handled one, never diagnosed one  
18 and never seen one in 24 years of practice.

19 I submit that my expert carries the day by a  
20 preponderance, and that's the question. If Dr. Otto  
21 Bendheim carries the day, we win, because preponderance  
22 limits itself to a determination of the competing  
23 evidence produced by the proponents in the courtroom.

24 But the more interesting thing, this is what  
25 I call you back to, one of the reasons I wanted the court

LISA VITOFF, RPR  
SUPERIOR COURT

1 to go through the prison, the entire prison record -- I  
2 know it's three and a half inches because I had to go  
3 through it too --

4 THE COURT: Full of duplication also.

5 MR. STERLING: Yes, but that's doesn't mean  
6 you don't have to go through it.

7 It's interesting to watch Sammy as he  
8 progresses through. But it's also most interesting to  
9 see what alcohol plays. Some of his write-ups, you're in  
10 prison, you wouldn't expect somebody that's in prison to  
11 be -- have such a demanding need for intoxicants that he  
12 gets written up that he's running a still. I mean, that  
13 it's stupid, it's irrational, in my opinion.

14 And yet, what does the record show of Sammy  
15 Lopez? The same man that repeatedly says no, I don't  
16 have an alcohol problem, I never drink, I wasn't drinking  
17 that night. The same man that -- I mean, two pages after  
18 he gets reports and they search the cell block for  
19 stills, illegal stills for the production of alcohol,  
20 he's getting written up because he's drunk, in prison.

21 What do we see? Sammy Lopez, no, he doesn't  
22 have a problem with alcohol, he never had a problem with  
23 alcohol. It's a long way to go to make somebody realize  
24 they've got a problem with alcohol.

25 All right. The last thing I'd like to

1 present to the court, in the form of mitigation, and it's  
2 not a big mitigation, because our Supreme Court has said  
3 so, but in this case I think it's crucial. Sammy Lopez,  
4 this being his third period of incarceration in prison,  
5 has shown a steady progress towards becoming an  
6 acceptable inmate, a model inmate, if you will.

7 It hasn't been easy, and I don't discount  
8 the State's impeachment, but it's interesting to see the  
9 overall gradients. He is improving. He has now  
10 reached this court -- I don't know, maybe I'm going too  
11 long and we've talked about that. Your Honor, either way,  
12 my client is going to spend his life in prison. Whether  
13 that life is for 25 years, 70 years, whether that life  
14 ends in a very quiet cemetery in Potters Field or whether  
15 it ends in the gas chamber, the time you got, we're not  
16 talking about anything left after prison.

17 Why do we fight for his life? Or why do I.  
18 because I'm the one vote? Very simply, this case is  
19 going to be endless. This case is either going to end  
20 today, or it's going to be endless. And that's for me,  
21 as a lawyer, and for me, as a taxpayer. Reason? This  
22 court has a choice. If the court says, I find cruel,  
23 heinous and depraved, and that warrants the death penalty  
24 and discounts the mitigation, my client will get an  
25 automatic appeal to the Arizona Supreme Court.

LISA VITOFF, RPR  
SUPERIOR COURT

1 In that appeal, even the worst of lawyers is  
2 going to point out three things: Number one, this isn't  
3 like the first time up. This court was nice enough and  
4 concerned enough in this case to give me the freedom to  
5 make a record, which I'm happy with as an appellate  
6 attorney.

7 The only issue which the State can claim  
8 death penalty in this case is the worst one. Anywhere in  
9 the United States especially heinous, cruel and depraved.  
10 that is an appellate attorneys dream. These appeals,  
11 even if there were no record here, would go for 15 years  
12 on the death penalty. There's no question in anybody's  
13 mind. I've given the court a lot.

14 Do you want to see the latest edition?  
15 There is more of them being knocked down or restricted  
16 and sent back for resentencing. We know it. The  
17 defendant's own brother, this court found cruel, heinous  
18 and depraved. Yet the resentencing judge did not.

19 That's the trouble with it. That's what's  
20 realized by every court. It's too discretionary. But in  
21 this case it's worse. I've got a record that disputes,  
22 under Arizona standards and under federally required  
23 standards, every issue.

24 So, my prospect is -- and I've told Sammy.  
25 even if the court sentences to death, what the court

LISA VITOFF, RPR  
SUPERIOR COURT



1 basically is saying is that the state of Arizona, and we  
2 the taxpayers, will spend an inordinant amount of money  
3 with no real hope of an execution in this case.

4 I would submit to the court, I would ask the  
5 court, because of the record, you've got to give, and it  
6 is under the federal standards, you've got to give every  
7 benefit of every doubt to the defendant in this case.

8 You've given me the weapons which I need to  
9 protect my client on appeal, your Honor. I submitted  
10 under the record we've submitted, with all -- concerning  
11 all things which can be argued for the defendant because  
12 they all can be argued without limit, I would submit to  
13 the court this court ought to give, elect in the thing of  
14 saying, Sammy Lopez, spend the rest of his life in  
15 prison, not the rest of the lawyer's lives on appeal. If  
16 this court were to give him life stacked, we accomplished  
17 the same thing and we save money. That's what I ask.

18 I submit to the court, that on the record in  
19 this case, you just have to go too far to give the death  
20 penalty. You have to assume certain things that happened  
21 in that room, that apartment, that night. And there is  
22 no evidence in the record to support those assumptions.  
23 The disgust that every human finds at the grizzliness of  
24 these photographs, and in that situation, I submit, that  
25 the State has simply failed to prove, as constitutionally

LISA VITOFF, RPR  
SUPERIOR COURT

1 required, the cruel, heinous, depraved aggravating  
2 circumstance to a sufficient level that outweighed the  
3 mitigation, while limited, that we have produced. That's  
4 my argument, your Honor.

5 Your Honor, could I make one comment?

6 THE COURT: You may.

7 MR. STERLING: As the court is aware, I  
8 would like, for the prior thing, that even the court  
9 mentioned in its minute entry, I ask court to address my  
10 client independently of me.

11 THE COURT: Oh, I will.

12 MR. STERLING: Thank you, your Honor.

13 THE COURT: State wish to be heard?

14 MR. AHLER: Judge, I feel like we're in the  
15 theater of the absurd here, some of these arguments that  
16 defense is making. Estafana Holmes was not a 35 or 40  
17 pound hunk of meat strung up by some wire. She was a  
18 living, breathing human being. She was 59 years old.  
19 She was a good and decent human being. Her killing was  
20 senseless. It was evil. There was no explanation at all  
21 as to why this defendant had to kill this woman in a way  
22 he did.

23 This court doesn't have to go outside this  
24 case itself to find the authority to establish that the  
25 facts in this case constitute especially cruel, heinous

1 and depraved. Our own Supreme Court has reviewed these  
2 same facts, and has said, unanimously, it was cruel.  
3 They reviewed it, even though the issue of heinousness  
4 and depravity was not raised, they reviewed it for those  
5 factors and found they met those factors.

6 We don't have to go to Utah. We don't have  
7 to redefine the standards, which is what the defense  
8 would want you to do under the U.S. Supreme court case,  
9 State v. Walton.

10 The aggravating factor is here. The facts  
11 in this case are not going to change. Horrible way in  
12 which he killed this woman is not going to change, no  
13 matter how many years we go, ten, 15, whatever.

14 On the mitigating factor, he's not met his  
15 burden of proof. If you will recall, the first time  
16 around, they made a similar argument. They tried to  
17 establish the alcohol consumption impaired his ability.  
18 And this court found, the first time around, that that  
19 was not sufficient enough to constitute a mitigating  
20 factor.

21 On appeal, the Arizona Supreme Court said.  
22 Judge D'Angelo, you were right. They have rephrased the  
23 argument, is all they've done. Now they throw out this  
24 theory of pathological intoxication. The problem is,  
25 it's not there. Otto Bendheim couldn't say it was there

1 three years ago. And they've tried to dress it up to  
2 make it look a little better, but it isn't there. The  
3 best he can say is a tentative diagnosis. How reliable  
4 can that be?

5 You look at these facts, you look at this  
6 man's history. You look at the fact that four days after  
7 he murdered this woman he's out there raping another  
8 woman. He's threatening to kill her. Where is there any  
9 mitigation in this man's life, either past, present or  
10 future, that is in any way socially redeeming? There is  
11 none. There's no mitigation here. There is extreme  
12 aggravation.

13 If this court cannot find especially cruel,  
14 heinous and depraved under these facts, I submit, that  
15 you can't find them anywhere. We would ask this court to  
16 sentence this man to the most severe penalty society can  
17 exact, because his crime deserves it. We would ask that  
18 you sentence him to death.

19 THE COURT: Anything further, Mr. Sterling?

20 MR. STERLING: Yes, your Honor. There's  
21 nothing societally redeeming in the defendant's  
22 background. I wish we could all argue with Paul on that.  
23 Probably can't.

24 But the statute doesn't say you get to give  
25 the death penalty when you feel like it. The statute

1 doesn't say when I feel like it or when he feels like it  
2 or even when the defendant wants it. The statute says.  
3 it's got to be a cold decision by law, directed by law.

4 This isn't a human upset, it's not human  
5 disgust, and it's not for a defendant to say it was  
6 worthy that I be born, not aborted. We're not trying, I  
7 hope we're not trying that morality in this courtroom  
8 because if so, it's -- I'm terribly under, underclasssed.  
9 I can't handle that burden.

10 The murder was senseless, it's evil, it's  
11 bloody, it was awful. The standards doesn't -- isn't  
12 that in the statute. In fact, the standard that is in  
13 the statute that we would all want to say isn't  
14 constitutional, even the Supreme Court acknowledges that,  
15 even the majority, everybody says, hey, especially cruel,  
16 heinous, depraved, man that's a joke.

17 Look what the Supreme Court has said. Where  
18 is the State's evidence of the five factors of Gretzler  
19 for depravity or heinousness, even especially  
20 heinousness. Where is the intent for the cruelty. That  
21 is not supplied by the limitation of the weapon. There's  
22 no showing here, if, if this one doesn't deserve the  
23 death penalty none of them do.

24 State, where is your evidence, that the  
25 defendant, like Gillies, controlled this woman for 15 to

1 20 hours before her death. That she sat in wonderment of  
2 am I going to die, that she didn't know.

3 How about the Robinson case, where they put  
4 the shotgun at the lady's head, said think about it, as  
5 she stood there tied up like a pig. The cruelty. The  
6 laughs that the man heard before death. We don't have  
7 that here. Was she taken out, staked over an ant hill?  
8 No. Was she left in the desert to die for seven days?  
9 Even in that one the Supreme Court says you can't do that  
10 unless you can show that's what the defendant intended.

11 What happened to this woman was she found a  
12 a bungler in her house one night and there ensued a hell  
13 of a fight. She was right, but she died. She died in  
14 the most efficient manner that was available. And that  
15 doesn't make it cruel, heinous and depraved.

16 It would have been worse if there would have  
17 only been a rock there. Jesse James -- Gillies, but even  
18 in Gillies they had to go behind that. They had to say,  
19 well, they kept her prisoner for hours and hours, hours  
20 and hours. They taunted her. There's nothing here of  
21 that nature.

22 The standard is and has to be a standard of  
23 law. Because if not, we've come full circle before  
24 affirming. What we've done is we just sit down and say,  
25 okay, juries no longer pass on the death penalty. It's

1 no societal conscious. Judge, what do you think about  
2 the murder, yes, and this murder was one of the most  
3 senseless I've ever seen, it's shocking, vial, wanton.  
4 but those aren't our standards.

5 There's no question in my mind that this  
6 defendant wouldn't face the death penalty in Utah, under  
7 Tuttle. That's why I argue Tuttle.

8 Mitigation. The Supreme Court previously  
9 said this. I did the appeal, first time up. Why didn't  
10 you argue heinousness and depravity? For a very simple  
11 reason, and it's the reason that the Supreme Court points  
12 out in every other line in their opinion in this case.  
13 On the record presented, we have to decide this. On the  
14 record presented, we have to decide this.

15 The record presented does support a finding  
16 of cruel, heinous and depravity. And you want to know  
17 why? Very simple. The only testimony offered by the  
18 State at the first trial was at least 23 stab wounds.  
19 period. Not were -- where they directed or anything  
20 else. But this court now has to sentence on the basis of  
21 the record I've given it, and the prospect of the future  
22 appeal, if there is going to be one.

23 And I submit to the court, and I appreciate  
24 the court giving me the record that I wish I had the  
25 first time, and on the record that's now before this

1 court, I submit, this court has no choice. The defendant  
2 is going to end up with a life sentence in this case,  
3 because it was not especially cruel -- pardon, let's be  
4 exact, especially heinous, cruel or depraved, as Arizona  
5 now must live up to the standard of Walton, or face a  
6 reversal by the Ninth Circuit.

7 I would ask the court, for my benefit, at  
8 least, to make me happy for two reasons, one, as a  
9 taxpayer. I'm sick and tired, even though I receive the  
10 money, and I know every attorney that does the death  
11 penalty litigation in Arizona appeals. I'm sick and tired  
12 of seeing the money thrown away there when it wasn't  
13 thrown away when he first went to prison on a stinking  
14 burglary.

15 THE COURT: Tell that to the legislature.  
16 Mr. Sterling.

17 MR. STERLING: I understand that, your  
18 Honor. But number two, one of things came up early in  
19 this case, why in the world would a defendant -- we are  
20 seeing more and more appeals now where the defendant  
21 stands in front of the judge and says, judge, I want a  
22 death penalty; lawyers, don't fight the death penalty.

23 We have to resort to Carriager.  
24 C A R R I A G E R, the case that says we must act  
25 independent of our client's instructions in that



1 situation, which I've cited the court before.

2 That was always a mystery to me, until about  
3 a year and a half ago I participated in a hearing in  
4 front of Judge Coulter, with an inmate by the name of  
5 Crowder, whose attorney had gotten him a life sentence.  
6 He wanted to change it.

7 Crowder shout his mouth off -- I'm throwing  
8 names, I didn't know this existed until this -- I want to  
9 cite my source, he told Judge Coulter, in about 20  
10 minutes of trial, why he wanted the death penalty and why  
11 his attorney had done him dirty by cutting a deal to get  
12 him life on an obvious death penalty case.

13 It seemed that Mr. Crowder had to be in a  
14 cell on the fourth floor of CB6, identical cell to that  
15 on death row at the lower levels. But Mr. Crowder was  
16 upset because he had to have a cellmate, there were two  
17 of them, because they were two men in a cell, mated up  
18 there on lifers. They could only have a 13 inch TV.  
19 They had to go, like normal inmates, they had to go out  
20 in the yard. They had to socialize. They had jobs to  
21 do. They had to go get their meals.

22 Now, to us on the outside, that doesn't  
23 sound that bad to me. But when Mr. Crowder stood up and  
24 said, no, I want a death penalty cell where I'm by  
25 myself, I can have all the electronics equipment I want

1 because I don't have a cellmate and I don't have any  
2 problems. I don't even have to go out of my cell to get  
3 dinner, they deliver it to me.

4 THE COURT: Is this part of your record.  
5 Mr. Sterling?

6 MR. STERLING: Yes, your Honor. I'd like it  
7 to be. I would like the reality of what goes on. I  
8 think the court should evaluate this case and sentence  
9 this defendant to life, not to death, because that's the  
10 sentence that is warranted. And even if he wants the  
11 death penalty because of the privileges, the temporal  
12 privileges that it will provide him, the law is the law.  
13 The law determined what punishment is to be exacted. It  
14 does it in words and by opinions.

15 I submit to the court, that, yes, it was  
16 senseless. it may have been evil. I don't like the word  
17 senseless because I think we've now answered the question  
18 as to why. We have made it on the mitigation. I submit  
19 we have carried our burden of mitigation, in light of the  
20 weakness of the State's case of aggravation.

21 THE COURT: Before I read the special  
22 verdict, which copies have now been supplied to counsel,  
23 I want to make a few comments of my own.

24 I've been practicing law since 1957. I've  
25 prosecuted first degree murder cases. I defended first

1 degree murder cases. In the last eight years or so I've  
2 been on the criminal bench approximately five years. Of  
3 that time I've presided over numerous first degree murder  
4 cases. I have never seen one as bad as this one. I  
5 hope, for your client's sake, that you have made an  
6 appropriate record.

7 The court returns the following special  
8 verdict. The defendant Samuel Villégas Lopez was found  
9 guilty by a jury verdict on April 17, 1987, of Count 1,  
10 murder in the first degree, Class 1 felony, in violation  
11 of A.R.S. 1105, 1101, 703, 808. Count 2, kidnapping,  
12 dangerous, in violation of A.R.S. 1304, 1301, 701, 801,  
13 808 and 604. Count 3, sexual assault, dangerous, in  
14 violation of A.R.S. 13-1406, 1401, 3821, 701, 702, 801,  
15 808 and 604. Count 5, burglary in the first degree,  
16 dangerous, in violation of A.R.S. 13-1508, 1507, 701,  
17 702, 801, 808 and 604. No motion for new trial was  
18 filed.

19 The court now determines beyond a reasonable  
20 doubt that the defendant killed and intended to kill the  
21 victim herein. The court has not held a hearing pursuant  
22 to A.R.S. 13-603C to establish restitution, if any, to  
23 the immediate family of the victim as the victim's family  
24 does not request restitution in this matter. Restitution  
25 for funeral expenses will be imposed and has been

LISA VITOFF, RPR  
SUPERIOR COURT

1 imposed.

2 On June 25, 1987, the court imposed a  
3 sentence of death against the defendant on Count 1.  
4 murder in the first degree, based upon the special  
5 verdict rendered June 25, 1987.

6 Because of the sentence of death, an  
7 automatic appeal was filed to the Arizona Supreme Court.  
8 On January 16, 1990, the Arizona Supreme Court affirmed  
9 all of the convictions but remanded for resentencing on  
10 the murder count only, State versus Lopez, 163 Arizona  
11 101, 786 P.2d 959, Arizona 1990.

12 The Arizona Supreme Court specifically held  
13 in State versus Lopez, supra, that the State had met its  
14 burden of proof, that the death of Essie Holmes was  
15 committed in a cruel, heinous and depraved manner  
16 pursuant to A.R.S. 13-703(F)(6).

17 Pursuant to the mandate of the Arizona  
18 Supreme Court, a new presentence report was obtained  
19 bearing the date of April 12, 1990.

20 On July 13, 1990, the court conducted a new,  
21 separate sentencing hearing pursuant to A.R.S. 13-703(B),  
22 at which the prosecution and defendant were given the  
23 opportunity to present evidence and argument as to the  
24 adequacy or inadequacy of the evidence to establish the  
25 existence of any of the aggravating circumstances as set

LISA VITOFF, RPR  
SUPERIOR COURT

1       forth in A.R.S. 13-703(F) and any of the mitigating  
2       circumstances set forth in A.R.S. 13-703(G) and any of  
3       the mitigating circumstances of any nature whatsoever,  
4       whether specified in the statute or not. All the  
5       material in the presentence reports and attachments were  
6       disclosed to the attorney for the defendant and to the  
7       attorney for the prosecution, the court having determined  
8       from examining the report and the attachments that none  
9       of the material contained therein was required to be  
10      withheld for the protection of human life. In addition,  
11      the court has considered all testimony and materials and  
12      evidence received at the time of the hearing on July 13,  
13      1990.

14                Aggravating circumstances. No. 1, the  
15      defendant has not been convicted on another offense in  
16      the United States for which, under Arizona law, a  
17      sentence of life imprisonment or death was imposable.

18                No. 2, based upon the opinion of the Arizona  
19      Supreme Court, in State versus Lopez, supra, the  
20      defendant was not previously convicted of a felony in the  
21      United States involving use or threat of violence on  
22      another person.

23                No. 3 in the commission of the offense, the  
24      defendant did not knowingly create a grave risk of death  
25      to another person or persons, in addition to the victim

1 of the offense.

2 No. 4, the defendant did not procure the  
3 commission of the offense by payment or promise of  
4 payment or anything of pecuniary value.

5 No. 5, the defendant did not commit the  
6 offense as consideration for the receipt, or in  
7 expectation of the receipt of anything of pecuniary  
8 value.

9 No. 6, the defendant committed the offense  
10 in an especially cruel manner. The evidence established  
11 beyond a reasonable doubt that on October 29, 1986, the  
12 defendant broke into the home of Estafana Holmes. He  
13 raped her, beat her and then brutally murdered her.

14 The evidence at trial shows that there was a  
15 tremendous struggle inside the victim's residence. Blood  
16 splatter was located on the floor in the kitchen, living  
17 room and the bathroom. Blood splatter was also observed  
18 on the walls in the kitchen and the bathroom. Samples of  
19 the blood were consistent with the victim's. The pools  
20 of blood reflected in the photographs admitted into  
21 evidence clearly indicate that at one point during the  
22 struggle the victim was at least erect bleeding on to the  
23 floor, standing erect bleeding on to the floor.

24 Undoubtedly she was either fighting the defendant and/or  
25 begging for her life. Other signs of struggle inside the

1 residence include a front screen door that was bent  
2 inward and a broken window. Evidence indicates that the  
3 window was broken from the inside out.

4 The victim, Estafana Holmes, was 59 years  
5 old. She was a small woman. She was approximately five  
6 foot two inches tall, weighed 124 pounds. When Miss  
7 Holmes' body was discovered on the morning of the 29th,  
8 she was nude from the waist down. The defendant had  
9 taken her pajama bottoms, tied them snugly around her  
10 eyes. A white lace scarf had been crammed tightly into  
11 her mouth.

12 Dr. Thomas Jarvis testified that Miss Holmes  
13 had approximately 23 stab wounds in the left breast and  
14 upper chest area. Many of these wounds would have by  
15 themselves been potentially fatal. Her throat was cut.  
16 She had three superficial lacerations on her right arm.  
17 She had superficial lacerations on her right arm which  
18 were characterized as defensive type wounds. The victim  
19 had three lacerations on her scalp and a stab wound to  
20 her left cheek.

21 According to Dr. Jarvis, these wounds were  
22 not fatal, but would have caused a considerable amount of  
23 bleeding. Essie Holmes had bruises on her head and left  
24 hand. Dr. Jarvis noticed dried blood streaming down her  
25 body and blood-sustained feet. In his opinion, Mrs.

1 Holmes was at some point either standing or sitting  
2 erect. Vaginal swabs taken at the autopsy showed the  
3 presence of semen and spermatozoa. According to Dr.  
4 Jarvis, none of the wounds were post-mortem.

5 No. 7, the defendant did commit the offense  
6 in an especially heinous or depraved manner.

7 The defendant's sexual assault of the  
8 victim, whether occurred before or after death, the  
9 securing, the securing of the pajama bottoms about her  
10 eyes, the cramming of a scarf in the victim's mouth, all  
11 constitute evidence of the defendant's heinous and  
12 depraved mind.

13 No. 8, the defendant did not commit the  
14 offense while in the custody of the Department of  
15 Corrections, a law enforcement agency or county or city  
16 jail.

17 No. 9, defendant has not been convicted of  
18 one or more other homicides, as defined in section  
19 13-1101, which were committed during the commission of  
20 the offense.

21 No. 10, the defendant was an adult at the  
22 time the offense was committed, but the victim was not  
23 under 15 years of age.

24 No. 11, the murdered individual was not an  
25 on duty peace officer who was killed during the course of

LISA VITOFF, RPR  
SUPERIOR COURT



1 performing his or her official duties.

2 Mitigating circumstances.

3 No 1. evidence was presented at the hearing  
4 on July 13, 1990, by way of direct testimony and video  
5 tape testimony, concerning defendant's capacity to  
6 appreciate the wrongfulness of his conduct or to conform  
7 his conduct to the requirements of law. Testimony was  
8 presented on behalf of the defendant that he possibly  
9 suffered from a condition known as pathological  
10 intoxication. Said testimony did not rise to any level  
11 of medical certainty, but rather was based upon  
12 hypothesis or speculation. The State presented evidence  
13 to rebut the hypothesis and speculation. And the court  
14 specifically finds that the defendant failed to meet his  
15 burden of proof in establishing this mitigating factor by  
16 a preponderance of the evidence. Thus this mitigating  
17 factor does not exist.

18 No. 2, defendant was not under unusual and  
19 substantial duress. This mitigating circumstance does  
20 not exist.

21 No. 3, the defendant was one of the  
22 individuals who actually committed the offense and was  
23 not found guilty by reason of being legally accountable  
24 for the conduct of another under the provisions of  
25 Section 13-303. This mitigating circumstance does not

LISA VITOFF, RPR  
SUPERIOR COURT

1 exist.

2 No. 4. the defendant could have foreseen  
3 that conduct, that his conduct in the course of the  
4 commission of the offense for which the defendant was  
5 convicted would cause or create a grave risk of causing  
6 death to another person. This mitigating circumstance  
7 does not exist.

8 No. 5. the defendant's age is not a  
9 mitigating factor, as he is of mature age.

10 Considering the fact that the victim was a  
11 59 year old woman and she was sexually assaulted and she  
12 was brutally beaten, stabbed numerous times, she had been  
13 bound, gagged, she had her throat cut, this first degree  
14 murder stands out above the norm of first degree murders.

15 No. 6. additionally, the court received  
16 evidence in the form of testimony from a Maricopa County  
17 detention officer that, to his knowledge, since the  
18 defendant had been transferred from the Department of  
19 Corrections to the Maricopa County Jail, the defendant  
20 has been a model prisoner. Given the fact that the  
21 defendant was scheduled to be resentenced on a charge of  
22 first degree murder, one would expect the defendant to be  
23 a model prisoner.

24 Exhibit 14 received at the hearing on July  
25 13, 1990, is a compilation of defendant's prison record

LISA VITOFF, RPR  
SUPERIOR COURT

1 on previous convictions. Exhibit 14 belies the  
2 defendant's contention. The court specifically finds the  
3 defendant has failed to establish this mitigating  
4 circumstance by a preponderance of the evidence, thus  
5 this mitigating circumstance does not exist.

6 Additionally, the court received testimony  
7 at the hearing on July 13, 1990, from Dr. Phillip Keene,  
8 a pathologist from Yavapai County, tending to contradict  
9 the testimony of Dr. Thomas Jarvis received at the time  
10 of trial. The court specifically finds that the  
11 testimony of Dr. Keene is, at best, speculation and fails  
12 to establish any mitigating factor. Thus this mitigating  
13 circumstance does not exist.

14 Conclusion. The court has considered all of  
15 the evidence admitted at trial relating to aggravating  
16 and mitigating circumstances, in addition to the  
17 testimony presented at the separate sentencing hearing.  
18 The prosecution and defendant have been permitted to  
19 rebut any information received at the hearing, including  
20 information presented at the trial, and were given fair  
21 opportunity to present argument as to the adequacy of the  
22 information, to establish the existence of any of the  
23 aggravating circumstances listed in A.R.S. 13-603(F) and  
24 of any mitigating circumstances, whether listed in A.R.S.  
25 13-703(G) or not.

LISA VITOFF, RPR  
SUPERIOR COURT

1           The court has found one statutory  
2           aggravating circumstance which applies to the defendant,  
3           which is that he committed the offense in an especially  
4           cruel, heinous or depraved manner. The court further  
5           found no mitigating circumstances sufficiently  
6           substantial to call for leniency.

7           The end of the special verdict.

8           Signed by myself, copies provided to  
9           counsel.

10          Come forward, please.

11          THE COURT: State your true name, please?

12          THE DEFENDANT: Samuel Villegas Lopez.

13          THE COURT: Date of birth?

14          THE DEFENDANT: 6-30-62.

15          THE COURT: There having been a  
16          determination of guilt by virtue of the verdict of the  
17          jury, it's the judgment of the court you are guilty of  
18          the crime of Count 1, murder, first degree, a Class 1  
19          felony, committed on or about October 29, 1986, in  
20          violation of A.R.S. 13-1105, 1101, 703, and 812.

21          The record will reflect I was the original  
22          sentencing judge. I presided at the trial. I've  
23          reviewed the presentence report, the original and the new  
24          presentence report. I've considered all the evidence  
25          submitted on your behalf during the course of the

LISA VITOFF, RPR  
SUPERIOR COURT

1 hearing, and the arguments of counsel.

2 At this time you have the opportunity to say  
3 something on your behalf if you so desire. Do you so  
4 desire?

5 THE DEFENDANT: No, sir.

6 THE COURT: Counsel, anything further?

7 MR. STERLING: Your Honor, as legal cause  
8 only. I take objection, or I note objection, for the  
9 record, to the special verdict, Page 4, first paragraph.  
10 The court has made a finding, begging for her life. I  
11 submit there's no evidence whatsoever, anywhere in this  
12 record to support such a finding.

13 THE COURT: I submit you're incorrect, sir.

14 MR. STERLING: Page 7 of the same special  
15 verdict, third paragraph, the court makes a finding that  
16 she had been bound, as well as gagged. Again, I submit  
17 there's no evidence in this record to support such a  
18 finding. That is my only legal cause at this point.

19 THE COURT: Thank you. The record will  
20 reflect.

21 Counsel for the State wish to be heard?

22 MR. AHLER: Nothing additional, your Honor.

23 THE COURT: All right. As punishment for  
24 this crime, first degree murder, it is ordered you shall  
25 suffer the penalty of death, to be inflicted by lethal

LISA VITOFF, RPR  
SUPERIOR COURT

1 gas, under the supervision of the Department of  
2 Corrections.

3 The Clerk is directed to file a notice of,  
4 direct notice of appeal to the Arizona Supreme Court on  
5 behalf of the defendant.

6 MR. STERLING: I would ask the court to  
7 further order that another counsel than myself be  
8 appointed to represent the defendant, as is the custom.

9 THE COURT: All right. Appoint the public  
10 defender to represent the defendant upon appeal, subject  
11 to substitution in the event of conflict.

12 Anything further?

13 MR. AHLER: Nothing.

14 THE COURT: Court will stand in recess.

15

16

17 (Whereupon the proceedings were concluded.)

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LISA VITOFF, RPR  
SUPERIOR COURT

# **EXHIBIT P**

OK FILE

JUDITH ALLEN  
BI J. Thomas  
FILED

1990 JUN 20 AM 8:28

GEORGE M. STERLING, JR.  
1101 West McDowell Road  
Phoenix, Arizona 85007  
(602) 257-0395  
State Bar No. 003105

Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Plaintiff,

vs.

SAMUEL VILLEGAS LOPEZ,

Defendant.

No. CR 163419

ORDER AUTHORIZING ADDITIONAL  
FUNDS FOR DEFENDANT'S  
COURT-APPOINTED MENTAL  
HEALTH EXPERT

(Assigned to Judge D'Angelo)

Pursuant to the Defendant's motion made in open  
court, the prosecution having no objection thereto and good  
cause appearing:

IT IS ORDERED authorizing M. B. Bayless, Ph.D., to  
provide further testing and evaluation of the Defendant in  
this case; and authorizing up to the sum of One Thousand One  
Hundred Dollars (\$1,100.00) for payment to M. B. Bayless,  
Ph.D. for such additional services.

DONE IN OPEN COURT this 19 day of June,  
1990.

*Peter T. D'Angelo*  
PETER T. D'ANGELO  
Judge of the Superior Court

///

///

(90)

GEORGE M. STERLING, JR.

Attorney at Law

1101 West McDowell Road  
Phoenix, Arizona 85007  
(602) 257-0395



GEORGE M. STERLING, JR.

Attorney at Law

1101 West McDowell Road  
Phoenix, Arizona 85007  
(602) 257-0395

1 Copy of the foregoing  
2 mailed/delivered this  
day of \_\_\_\_\_, 1990, to:

3 Mr. Paul Ahler  
4 Deputy County Attorney  
111 West Monroe, #1800  
Phoenix, Arizona 85003

5 Brad Bayless  
6 2034 N. 15th Avenue  
Phoenix, Arizona 85007

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JUDITH ALLEN, CLERK  
BY *George* DEP

FILED

90 MAR 30 AM 8:58

1 GEORGE M. STERLING, JR.  
1101 West McDowell Road  
2 Phoenix, Arizona 85007  
(602) 257-0395  
3 State Bar No. 003105

4 Attorney for Defendant

5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

6 IN AND FOR THE COUNTY OF MARICOPA

7 STATE OF ARIZONA, )

8 Plaintiff, )

9 vs. )

10 SAMUEL VILLEGAS LOPEZ, )

11 Defendant. )

No. CR-163419

STIPULATION AND ORDER

RE: APPOINTMENT OF

INVESTIGATOR AND MENTAL HEALTH

EXPERT FOR DEFENDANT IN A

CAPITAL CASE

(Assigned to Judge D'Angelo)

12 Pursuant to the authority of A.R.S. Sec. 13-4013(b),  
13 undersigned counsel hereby stipulate and agree that this Court  
14 enter the attached order appointing a contract private-  
15 investigator and a mental health expert to assist the Defendant  
16 in his Court - appointed counsel in preparing and presenting  
17 mitigating factors in the resentencing of the Defendant.

18 RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of March, 1990.

19  
20  
21 *George M. Sterling, Jr.*  
22 GEORGE M. STERLING, JR.  
23 Attorney for Defendant

24 *Paul W. Ahler*  
25 PAUL H. AHLER  
26 Deputy County Attorney  
27  
28

GEORGE M. STERLING, JR.

Attorney at Law

1101 West McDowell Road  
Phoenix, Arizona 85007  
(602) 257-0395

ORDER

Upon the foregoing stipulation, and the mandate of A.R.S. Sec. 13-4013(b);

IT IS ORDERED appointing Kirk Fowler as a (contract) private-investigator to assist the Defendant and his court-appointed attorney by providing investigative services as directed by said Defendant and attorney as necessary for resentencing.

IT IS FURTHER ORDERED authorizing the court-appointed counsel to retain at county expense the services of M. B. Bayless, Ph.D. whose address is 2034 North 15th Avenue in Phoenix as a mental health expert to assist the Defendant and his court-appointed attorney for purposes of resentencing; and it is initially authorizing services in the sum of Six Hundred Fifty Dollars (\$650.00) with leave for additional sums upon further application by the Defendant or his counsel.

DONE IN OPEN COURT this 29 day of March, 1990.

Peter T. D'Angelo  
THE HONORABLE PETER T. D'ANGELO  
Judge of the Superior Court

Conformed copies of the foregoing mailed/delivered this \_\_\_\_\_ day of \_\_\_\_\_, 1990, to:

Kirk Fowler  
8306 E. Welsh Trail  
Scottsdale, AZ 85258

Mr. M. B. Bayless, Ph.D.  
2034 North 15th Avenue  
Phoenix, Arizona

## OFFICE DISTRIBUTION

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REMANDS	

**SUPERIOR COURT OF ARIZONA**  
**MARICOPA COUNTY**

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APR 02 '90

Clerk of the Court

DIST. CENTER

CLERK OF THE COURT

5

Code 3-29-90 Date

HON. PETER T. D'ANGELO

A.M. Schroeder

Judge/Commissioner/Pro Tem

Deputy

NO. CR-163419

STATE OF ARIZONA

County Attorney  
 By: Paul H. Ahler

vs.

SAMUEL VILLEGAS LOPEZ

George M. Sterling, Jr.

Kirk Fowler  
 8306 E. Welsh Trail  
 Scottsdale, AZ 85258

M.B. Bayless, Ph.D.  
 2034 North 15th Avenue  
 Phoenix, AZ

Dispo

Upon stipulation of the parties, and the mandate of  
 A.R.S. §13-4013(b),

IT IS ORDERED appointing Kirk Fowler as a contract  
 private investigator to assist the Defendant and his Court  
 appointed attorney by providing investigative services as  
 directed by said Defendant and attorney as necessary for  
 resentencing.

IT IS FURTHER ORDERED authorizing the Court appointed  
 counsel to retain at county expense the services of M.B. Bayless,  
 Ph.D. as a mental health expert to assist the Defendant and  
 his court appointed attorney for the purposes of resentencing; and

IT IS FURTHER ORDERED initially authorizing services in  
 the sum of \$650.00 with leave for additional sums upon further  
 application by the Defendant or his counsel, all in  
 accordance with formal written Order signed by the Court  
 March 29, 1990.

022

(18)